

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BL SANTA FE, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11190 ()

(Joint Administration Requested)

**DECLARATION OF MICHAEL NORVET, PRESIDENT OF THE SOLE MEMBER
OF THE DEBTORS, IN SUPPORT OF DEBTORS' FIRST DAY MOTIONS**

I, **Michael Norvet**, declare under penalty of perjury:

1. I am the President of BL Santa Fe (Holding), LLC, a Delaware limited liability company, ("Holding") the Sole Member of BL Santa Fe (Mezz), LLC, a Delaware limited liability company ("Mezzanine Borrower"), which is the Sole Member of BL Santa Fe, LLC, a Delaware limited liability company ("Senior Borrower") (Mezzanine Borrower and Senior Borrower are sometimes collectively referred to herein as the "Debtors" and each individually as a "Debtor").

2. I became President of Holding in December 2020 pursuant to Written Consent for such appointment by the members holding a majority vote.

3. I hold a membership interest in the general partner of Evolution RE Bishops Lodge, LP, which is a member of Holding, which in turn owns 100% of the Mezzanine Borrower. As a result of my interest, I have been involved with the Resort since 2017.

4. I am qualified to serve in this capacity as I have spent my career in public accounting, banking and investments performing audits, placing commercial loans, structuring leveraged acquisitions and investing in real estate. I am also the Managing Member of a

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective federal tax identification numbers, are: BL Santa Fe, LLC (4586) and BL Santa Fe (Mezz), LLC (1098). The location of the Debtors' corporate headquarters is 1297 Bishops Lodge Rd, Santa Fe, NM 87501.

partnership invested in a 183-room luxury hotel located in Dallas, Texas. I have an MBA in accounting and a BBA in Finance.

5. On August 25, 2021 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”). The Debtors intend to continue in possession of their assets and the management of their business as debtors in possession during the pendency of these chapter 11 cases (collectively, the “**Chapter 11 Cases**”).

6. As described more fully herein, the Debtors own and operate a luxury resort known as Bishop’s Lodge located at 1297 Bishops Lodge Road, Santa Fe, New Mexico 87506 (the “Resort”), approximately three miles north of historic Downtown Santa Fe. After acquiring the Resort in 2014, the Debtors have experienced financial difficulties, delays, and cost overruns during an extensive, property-wide redevelopment, renovation, and improvement of the Resort (the “Project”).

7. I submit this declaration (this “Declaration”), pursuant to Rule 1007-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (a) to provide a brief overview of the Debtors and the Chapter 11 Cases, and (b) in support of the Debtors’ first day motions and applications (collectively, the “First Day Motions”), which are intended to, among other things, minimize the adverse effects of the Debtors’ entry into bankruptcy, enable the Debtors to transition smoothly into chapter 11, and to continue operating as debtors in possession, all in order to preserve the value of their assets for the benefit of their stakeholders. This Declaration also provides an overview of the restructuring the Debtors intend to accomplish under their plan of reorganization filed concurrently with their voluntary petitions.

8. Except as otherwise set forth herein, the statements set forth in this Declaration are based upon: (a) my personal knowledge; (b) information supplied to me by members of the Debtors' management or the Debtors' professionals; (c) my review of relevant documents and business records maintained in the ordinary course of the Debtors' business; or (d) my opinion based upon my experience and knowledge of the Debtors' business, operations, and financial condition. If called upon to testify, I would testify competently to the facts set forth in this Declaration on that basis.

9. Parts I through III of this Declaration provide an overview of the business, organizational structure, and capital structure of the Debtors, the events leading to the commencement of these Chapter 11 Cases (as defined below), and the negotiations among the Debtors' key constituents that culminated in the execution of the RSA (as defined below) and the Debtors' Plan (as defined below). Part IV addresses the First Day Motions with respect to which the Debtors are seeking immediate relief to avoid irreparable harm to their business and facilitate a smooth entry into chapter 11.

I.
EXECUTIVE SUMMARY

10. In addition to the First Day Motions, on the Petition Date the Debtors also filed: (a) a Disclosure Statement for Chapter 11 Plan of Reorganization (the "Disclosure Statement"); (b) the Scheduling Motion (as defined below); and (c) the Chapter 11 Plan of the Debtors (the "Plan"). Importantly, the Plan contemplates the payment in full or reinstatement of all allowed general unsecured claims.

11. The Plan implements the provisions of a Restructuring Support Agreement dated August 29, 2021 (the “RSA” or “Restructuring Support Agreement”)² by and among the following parties:

- (a) Evolution RE Bishops Lodge, LP (“Evolution”);
- (b) BL Resort Investment, LLC (“BL Resort Investment”);
- (c) Alexander James Walter (“Walter”);
- (d) Rebecca Walter Dunn Irrevocable Trust (“Trust Guarantor”);
- (e) Nunzio DeSantis (“DeSantis”) (Evolution, BL Resort Investment, Walter, Trust Guarantor, and DeSantis are sometimes collectively referred to herein as the “Non-Debtor Affiliates” and each individually as a “Non-Debtor Affiliate”);
- (f) DB Bishops Lodge LLC, a Delaware limited liability company (together with its successors and assigns, “Senior Lender”); and
- (g) Juniper Bishops, LLC (“Mezzanine Lender”) (Senior Lender and Mezzanine Lender are sometimes collectively referred to herein as the “Non-Debtor Parties” and each individually as a “Non-Debtor Party”).

12. Non-Debtor Affiliates, and the Non-Debtor Parties are collectively referred to herein as the “RSA Parties” and each individually as an “RSA Party.”

13. As described in greater detail in this Declaration, and subject to the terms and conditions of the RSA and the Plan, the Plan restructures the obligations owed to the Senior Lender, resolves the obligation owed to the Mezzanine Lender, and restructures the equity structure of Senior Borrower. In short, the Plan provides for Mezzanine Borrower to convey 100% of the membership interests in Senior Borrower to Juniper BL HoldCo, LLC (“JBL HoldCo”), which is a wholly owned subsidiary of Mezzanine Lender. In return: (i) the Mezzanine Loan (as defined below) will be satisfied in full; (ii) JBL HoldCo will finance the completion of the Resort renovations and its operations; (iii) Mezzanine Borrower will receive the economic entitlement to

² The RSA is attached to this Declaration as Exhibit A. Capitalized terms not otherwise defined in this Declaration have the meaning given them in the RSA.

receive from JBL HoldCo certain back-end distributions from Resort operations and/or disposition; and (iv) the Senior Loan (as defined below) will be restructured.

II.
THE DEBTORS' BUSINESS AND CAPITAL STRUCTURE

A. The Resort and the Project

14. The Debtors' only potential income producing asset is the Resort. The Resort is operated as part of the exclusive Auberge Resorts Collection ("Auberge") pursuant to a certain Management Agreement between the Senior Borrower and Auberge Resorts LLC. The Resort is one of only twenty-one properties in Auberge, marketed as one-of-a-kind experiences in extraordinary destinations.

15. The Resort is situated on 317 secluded acres situated at the foot of the Sangre de Cristo Mountains and bordering the Santa Fe National Forest. Despite its private location, it is mere minutes to the renowned art and cultural scene of Santa Fe's historic Plaza and Canyon Road. The property was originally settled more than 150 years ago by Bishop Jean Baptiste Lamy, who built the iconic Lamy's Chapel that has been restored and remains on the property today. In this distinctive Southwestern setting, the Resort aims to offer nature-driven adventures and art experiences as part of its high-end accommodations.

16. Senior Borrower acquired the Resort in late 2014 and closed the Resort in mid-2015 to commence and carry-out the Project. The Project seeks, among other things, to: (i) expand the guest room count from 91 rooms to 104 rooms, including 92 guest rooms and suites and 12 residential style units; (ii) replace on-site automobile roadways with smaller walking and electric cart paths; (iii) renovate the restaurant and bar; (iv) expand the spa and fitness studio; and (v) improve the swimming pool with a new deck area. The finished Resort's amenities are expected to also include: (i) horseback trail-riding (with on-site stables and pasture); (ii) a trout fishing

stream and pond (with on-site fly fishing instruction and outfitting); (iii) hiking and mountain biking trails continuing into the adjoining Santa Fe National Forest; (iv) an arts studio; (v) an event lawn; (vi) group event space; (vii) boutique retail stores; and (viii) an amphitheater for live performances and movie screenings.

17. Although construction on the Project is still ongoing, the Resort completed a soft reopening on July 1, 2021 with thirty (30) rooms. Presently, sixty-four (64) guest rooms are available for reservations, and it is expected that the Resort rooms will be fully operational by October 2021.

B. Organization of the Debtors

18. Holding holds 100% of the membership interest in the Mezzanine Borrower, and Mezzanine Borrower holds 100% of the membership interest in the Senior Borrower. The Resort is 100% owned by Senior Borrower.

19. Holding is owned principally by: (i) Evolution; (ii) DeSantis; (iii) BL Resort Investment; and (iv) HRV Santa Fe, LLC (“HRV”) (collectively, DeSantis, BL Resort Investment, HRV, and Evolution are referred to as the “Members”).

20. Holding was formed pursuant to the Delaware Limited Liability Company Act by the filing of a Certificate of Formation of the Company with the Secretary of State of the State of Delaware on August 25, 2015. Holding was originally governed by a certain Limited Liability Company Agreement dated August 15, 2015. The original members of BL Santa Fe were DeSantis, BL Resort Investment, and HRV. On or about February 7, 2017, the members of Holding executed a certain Amended and Restated Limited Liability Company Agreement for the purpose of admitting Evolution as an additional member. On December 16, 2020, a majority of the Holding members agreed by written consent to ratify a certain Second Amended and Restated Limited Liability Company Agreement dated December 15, 2020 (the “Written Consent”). By the

same Written Consent, Holding (i) removed HRV as its Manager; (ii) elected Brad Brooks, Michael Norvet, Nunzio DeSantis, and Alexander Walters to its new Board of Managers; and (iii) elected Michael Norvet as its President and Erica Chapman as its Secretary. The Written Consent was executed by Evolution, BL Resort Investment, and Nunzio DeSantis – being members holding a total of 90.1% of the membership interest in Holding.

21. The Mezzanine Borrower was formed pursuant to the Delaware Limited Liability Company Act by the filing of a Certificate of Formation of the Company with the Secretary of State of the State of Delaware on February 7, 2017. The Mezzanine Borrower was originally governed by a certain Limited Liability Company Agreement dated February 7, 2017. In June __, 2019, the sole member of the Mezzanine Borrower – Holding – executed a certain Amended and Restated Limited Liability Company Agreement, thereby adding Ricardo Beausoleil and Lisa M. Pierro as Springing Members and Independent Managers (as defined therein). BL Santa Fe and all Independent Managers have authorized the filing of the Mezzanine Borrower’s chapter 11 bankruptcy case.

22. The Senior Borrower was formed pursuant to the Delaware Limited Liability Company Act by the filing of a Certificate of Formation of the Company with the Secretary of State of the State of Delaware on June 20, 2014. The Senior Borrower was governed by a certain Limited Liability Company Agreement dated February 7, 2017, until June 2019, when the sole member of the Senior Borrower – the Mezzanine Borrower – executed a certain Third Amended and Restated Limited Liability Company Agreement dated June 2019, thereby adding Jennifer A. Schwartz and Steven P. Zimmer as Springing Members and Independent Managers (as defined therein). The Mezzanine Borrower and all Independent Managers have authorized the filing of the Senior Borrower’s chapter 11 bankruptcy case.

23. As set forth more fully below, Senior Borrower and Mezzanine Borrower owe their respective two largest creditors, Senior Lender and Mezzanine Lender, an aggregate amount of no less than \$74,574,295.93.

C. Mismanagement of the Project and Removal of HRV and Holland

24. Construction on the Resort was originally scheduled to be completed in July of 2018. The initial construction budget was \$70,500,000. HRV, as manager, hired Bradbury Stamm as general contractor for the Project, but later dismissed him at a cost of over \$2,000,000. A second general contractor was hired and dismissed by HRV, at a cost of \$75,000 and additional delay of the Project. HRV then appointed itself the general contractor of the Project, and the Project was again delayed, mismanaged and continued to run over budget.

25. Due to the mismanagement which is detailed in the arbitration proceeding commenced against HRV and its principal, Richard F. Holland (“Holland”), on or about December 16, 2020, HRV and Holland were removed from their positions as officers and managers of Holding and the Debtors. However, following their removal, Holland and HRV refused to acknowledge the Written Consent, and continued to hold themselves out as the manager and officer of Holding and the Debtors, despite notice to the contrary from the Debtors through new management and certain amendments to the operating agreements.

D. The Senior Loan and Litigation with the Senior Lender

26. The predecessor-in-interest to Senior Lender, Fortress Credit Co LLC (“Original Lender”), made a loan in the maximum principal amount of up to \$43,000,000.00 (the “Senior Loan”) to Senior Borrower, pursuant to that certain Loan Agreement, dated as of June 14, 2019, by and among Original Lender, as lender and agent, and Senior Borrower, as borrower, as assigned by Original Lender to Senior Lender, as supplemented by that certain Pre-Negotiation Agreement dated July 15, 2020 between Senior Borrower; Senior Lender;

Holland; DeSantis; Walter; and Trust Guarantor (Holland, together with DeSantis and Walter, collectively, the “Senior Loan Guarantors”), and as amended by that certain Loan Modification Agreement, dated as of September 17, 2020, by and among Senior Borrower, Senior Lender, and the Guarantors (“Senior Loan Modification”) (as the same may be further amended, modified, supplemented and/or amended and restated from time to time, the “Senior Loan Agreement”), which Senior Loan is secured by, among other things, a senior lien on certain real and personal property owned by Senior Borrower. The Senior Loan is evidenced by certain “Loan Documents” as defined in the Senior Loan Agreement (the “Senior Loan Documents”).

27. As a result of, among other things, the existence of a Shortfall, Carry Shortfall and/or Interest Shortfall (as those terms are defined in the Senior Loan Documents) in an aggregate amount of not less \$9,000,000.00, including certain amounts funded by Mezzanine Lender as protective advances in the amount of \$6,721,330.02 and Senior Borrower’s failure to timely meet certain milestones under the Senior Loan Documents, the Senior Borrower and Senior Loan Guarantors defaulted under the Senior Loan Documents.

28. By letter dated April 7, 2021, Senior Lender notified Senior Borrower and Senior Loan Guarantors of the defaults under the Senior Loan Documents.

29. Because of these defaults under the Senior Loan Documents, on May 7, 2021 Senior Lender initiated litigation to appoint a receiver through a lawsuit styled as *DB Bishops Lodge, LLC v. BL Santa Fe, LLC*, No. D-101-CV-2021-01071 (First Judicial District Court, County of Santa Fe, State of New Mexico) (the “Receivership Court”).

30. Pursuant to an Order Appointing Receiver dated June 4, 2021, the Receivership Court appointed MCA Financial Group, LTD., by and through its Senior Managing Director, Keith

Bierman (the “Receiver”), as the receiver for the Senior Borrower. The Receiver was appointed by the Receivership Court over the Collateral of the Senior Lender, and has been overseeing the completion and operation of the Resort since his appointment. Since then, the Project has progressed and for such reason, the Debtors seek to continue forward with the Receiver in a similar capacity.

31. Notwithstanding Mezzanine Borrower’s defaults and the appointment of the Receiver over Senior Borrower, Mezzanine Lender made several protective advances on behalf of Senior Borrower, including a \$3,200,000 advance to the Receiver on June 17, 2021.

E. The Mezzanine Loan and UCC Sale

32. Mezzanine Lender made a mezzanine loan (the “Mezzanine Loan”) to Mezzanine Borrower, pursuant to that certain Mezzanine Loan Agreement dated as of June 14, 2019, by and among Mezzanine Lender, as lender and as agent for lender (“Mezzanine Agent”) and Mezzanine Borrower, as supplemented by that certain Pre-Negotiation Agreement dated as of July 15, 2020 by and among Mezzanine Lender, Mezzanine Agent, Mezzanine Borrower, Senior Borrower, and Holland, DeSantis, Walter, Trust Guarantor, and together with Holland, DeSantis and Walter (collectively, the “Mezzanine Loan Original Guarantors”), and as amended by that certain Mezzanine Loan Modification Agreement dated as of September 17, 2020 (the “Mezzanine Loan Modification”) by and among Mezzanine Borrower, Mezzanine Loan Original Guarantors, Mezzanine Agent and Mezzanine Lender (as the same may be further amended, modified, supplemented and/or amended and restated from time to time, the “Mezzanine Loan Agreement”), which Mezzanine Loan is secured by the membership interests owned by Mezzanine Borrower in Senior Borrower, among other things (the “Mezzanine Collateral”). The Mezzanine Loan is evidenced by certain “Loan

Documents” as defined in the Mezzanine Loan Agreement (the “Mezzanine Loan Documents”).

33. The Mezzanine Lender and the Mezzanine Borrower entered into a certain Letter Agreement dated February 16, 2021, and titled *Re: Potential Recapitalization of Mezzanine Loan – Bishop’s Lodge*, as amended by that certain First Amendment to Letter Agreement – Potential Recapitalization of Mezzanine Loan (Bishop’s Lodge), dated April 5, 2021 (collectively, the “Letter Agreement”). The Letter Agreement contemplated a potential transaction to recapitalize the Mezzanine Loan. However, Holland and HRV were unwilling to engage in a restructuring transaction as proposed by the Letter Agreement.

34. As a result of, among other things, the failure to pay shortfalls and interest payments (including certain amounts funded by Mezzanine Lender as protective advances under the Mezzanine Loan Documents), the failure to timely pay the Monthly Debt Service Payment Amount (as defined in the Mezzanine Loan Documents) of \$195,297.64 due in April 2021, and the failure to timely achieve substantial completion of the Resort by the required date, Mezzanine Borrower and Mezzanine Loan Original Guarantors defaulted (collectively, the “Mezzanine Default”) under the Mezzanine Loan Documents.

35. By letter dated April 7, 2021, Mezzanine Lender notified Mezzanine Borrower and Mezzanine Loan Original Guarantors of the defaults under the Mezzanine Loan Documents.

36. By letter dated April 19, 2021, Mezzanine Lender accelerated the Mezzanine Loan.

37. By separate letter dated April 19, 2021, Mezzanine Lender gave notice of the public disposition of the Mezzanine Collateral pursuant to NY UCC § 9-611 (the “Mezzanine UCC”).

Sale”). The Mezzanine UCC Sale was originally to take place on June 4, 2021, and has been subsequently continued on a number of occasions.

38. By letter dated April 21, 2021, as a result of the Mezzanine Default, Mezzanine Lender exercised its right under the Mezzanine Loan Documents to instruct Mezzanine Borrower to: (i) cause Senior Borrower and Developer³ to immediately terminate that certain Development Agreement dated as of June 14, 2019 by and between Senior Borrower and Developer (the “Development Agreement”); and (ii) cause Developer to transfer its responsibilities under the Development Agreement to a contractor selected by Mezzanine Lender in accordance with the Mezzanine Consent of Developer dated as of June 14, 2019.

39. Also, by letter dated April 21, 2021, Mezzanine Lender terminated Mezzanine Borrower’s ability to take advantage of the proposal under the Letter Agreement.

F. Litigation Between the Members

40. On April 30, 2021, Holding, the Mezzanine Borrower, and Senior Borrower entities filed a lawsuit against HRV and Holland in a lawsuit styled as *BL Santa Fe (Holding) LLC et al. v. HRV Santa Fe LLC, et al.*, No. D-101-CV-2021-01007 (First Judicial District Court, County of Santa Fe, State of New Mexico) (the “Membership Lawsuit”), seeking injunctive relief against HRV and Holland to prohibit their continued interference in the operations of the Debtors.

41. The original *Complaint for Injunctive Relief* in the Membership Lawsuit alleges that “[u]nder the management of Holland and HRV, the Hotel Project was significantly delayed and over budget” and that “Holland and HRV, inter alia, mismanaged funds, failed to provide updates to investors, hired friends and family, and deceived investors and lenders.”

³ Pursuant to the Mezzanine Loan Documents, Mezzanine Lender consented to Senior Borrower’s hiring of HRV Hotel Partners, LLC, a Georgia limited liability company (the “Developer”), to act as the Developer of the Hotel renovation project. Holland is the majority owner of the Developer.

42. In the Membership Lawsuit, the New Mexico District Court enjoined the parties from entering into agreements with third-parties that would purport to bind them with respect to the financing for, or construction or operation of, the Resort or Project without first providing specific notice to any third-party and the other parties to the Membership Lawsuit.

43. The Members agreed that the triable issues asserted in the Membership Lawsuit should be resolved through arbitration, which is currently pending before the American Arbitration Association as Case No. 01-21-0003-5678. The arbitration panel is currently in the process of being selected.

G. Pre-Bankruptcy Litigation

44. After (i) HRV was notified that it was no longer manager for Holding; (ii) Holland was notified that he had been removed from any officer roles he held in the Mezzanine Borrower and Holding; and (iii) both HRV and Holland were notified that they each no longer had authority to act on behalf of the company, HRV and Holland refused to comply, asserting that such company actions taken were ineffective.

45. Notwithstanding the mismanagement of the Project by HRV and Holland discussed above, the impetus for the Debtors seeking injunctive relief stems directly from events this year. In January 2021, Holding learned that an additional \$6,000,000 was required to balance the construction project and allow for its completion. At this time, the Members of Holding, including HRV, reached an agreement with the Mezzanine Lender to fund the construction project further. The Letter Agreement was signed with the Mezzanine Lender that required that Holding give up its majority ownership and control of the construction project. As a result of the Letter Agreement, the Mezzanine Lender disbursed approximately \$6,500,000 to keep all loans in balance. Including additional advances thereafter, the construction project is now close to \$20,000,000 over budget and more than three years past its expected completion date.

46. In early April 2021, HRV and Holland executed a letter of intent with an outside investor in direct contradiction to the Letter Agreement. The new letter of intent provided, among other things, for a separate “Definitive Agreement” to be finalized later that would place all control and management of the project in the outside investor.

47. Upon learning of the new letter of intent, the Mezzanine Lender threatened to foreclose on its collateral discussed above; as did the Senior Lender.

48. Coupled with the mismanagement and outright refusal by HRV and Holland to cease holding themselves out as managers and officers of the Debtors, the Debtors filed the Membership Lawsuit and obtained the injunctive relief discussed above.

H. The Debtors’ Business Operations

49. The Debtors sole source of income is the Resort. Auberge handles the day-to-day operation of the Resort. Currently, the Receiver handles the oversight of the construction project and other operational needs.

50. The construction is conducted by the Kellum Group, a construction company referred by Auberge who is familiar with its common requirements. Construction is advancing toward completion, with rooms continuing to be completed and open. The pool, ballroom, and event lawn are open, and accommodations for multiple weddings have occurred. Other amenities are being completed and opened regularly.

51. According to Auberge, there is in excess of \$3,000,000 in reservations for remainder for 2021, with the potential for such amount to increase as additional rooms become available for reservation.

III.
THE RESTRUCTURING AND THE PLAN

52. The Debtors believe that the best path forward is to restructure the business through the Plan, thereby reducing their secured debt by the amount of the Mezzanine Lender's debt, and providing the Debtors with the funding and ability to complete the Project and operate the Resort on a go-forward basis. Importantly, the Plan will pay all allowed general unsecured creditors in full or otherwise leave such creditors unimpaired, and will preserve many important vendor relationships. Given the Debtors' secured debt obligations and defaults, the Plan provides for an organized and efficient restructuring that will maximize value and minimize operational disruptions and administrative costs.

53. Below is a demonstrative chart of the classification and treatment of claims and interests under the Plan.

SUMMARY OF CLASSIFICATION & TREATMENT UNDER CHAPTER 11 PLAN				
Class	Claim/Equity Interest	Treatment of Claim/Interest	Impairment	Projected Recovery Under the Chapter 11 Plan
1	Senior Borrower Secured Claims	On the Effective Date, except to the extent that Senior Lender agrees to less favorable treatment, Senior Lender shall, at the option of Senior Borrower, receive the following in satisfaction of the Senior Borrower Secured Claim: (i) payment in full in Cash or (ii) payment in accordance with the Amended and Restated Senior Loan Documents. Notwithstanding anything contained in the Plan, the Confirmation Order or the Amended and Restated Senior Loan Documents, the Senior Secured Parties shall retain all rights and claims against any Senior Loan Guarantor that does	Impaired	100%

		not agree to be a Releasing Party under the Plan or that objects to confirmation of the Plan.		
2	Senior Borrower Other Secured Claims	Each Holder of an Allowed Senior Borrower Other Secured Claim shall, at the option of Senior Borrower or Reorganized Senior Borrower, as applicable, receive either: (1) reinstatement of such Claim pursuant to Section 1124 of the Bankruptcy Code; (2) payment in full in Cash, plus interest to the extent entitled to interest under applicable law, on the later of (A) the Plan Effective Date, or (B) the date such payment is due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Claim; or (3) such other treatment rendering such Claim Unimpaired under the Bankruptcy Code, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Senior Borrower Other Secured Claim.	Unimpaired	100%
3	Senior Borrower Priority Claims	Each Holder of an Allowed Senior Borrower Priority Claim shall, at the option of Senior Borrower or Reorganized Senior Borrower, as applicable, receive either: (1) reinstatement of such Claim pursuant to Section 1124 of the Bankruptcy Code; (2) payment in full in Cash, plus interest to the extent entitled to interest under applicable law, on the later of (A) the Plan Effective Date, or (B) the date such payment is due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such	Unimpaired	100%

		Claim; or (3) such other treatment rendering such Claim Unimpaired under the Bankruptcy Code, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Senior Borrower Priority Claim.		
4	Senior Borrower General Unsecured Claims	Each Holder of an Allowed Senior Borrower General Unsecured Claim shall, at the option of Senior Borrower or Reorganized Senior Borrower, as applicable, receive either: (1) reinstatement of such Claim pursuant to Section 1124 of the Bankruptcy Code; (2) payment in full in Cash, plus interest to the extent entitled to interest under applicable law, on the later of (A) the Plan Effective Date, or (B) the date such payment is due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Claim; or (3) such other treatment rendering such Claim Unimpaired under the Bankruptcy Code, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Senior Borrower General Unsecured Claim.	Unimpaired	100%
5	Senior Borrower Interests	With respect to Senior Borrower's treatment of Senior Borrower Interests held by Mezzanine Borrower, Mezzanine Borrower will retain its Interest in Senior Borrower. Notwithstanding the foregoing, as set forth in Class 6 below, upon the Plan Effective Date, Mezzanine Borrower shall convey 100% of the Senior Borrower Interests to Mezzanine Lender in satisfaction of Mezzanine Lender's Secured	Unimpaired	100%

		Claim against Mezzanine Borrower.		
6	Mezzanine Borrower Secured Claims	Class 6 Mezzanine Borrower Secured Claim shall receive 100% of Mezzanine Borrower's Senior Borrower Interests in the Reorganized Senior Borrower and any and all Claims or Cause of Actions against Senior Borrower held by Mezzanine Borrower, on the Plan Effective Date, in full and final satisfaction of all Mezzanine Borrower Secured Claims.	Impaired	Unknown
7	Mezzanine Borrower Priority Claims	Each Holder of an Allowed Mezzanine Borrower Priority Claim shall, at the option of Mezzanine Borrower or JBL HoldCo, as applicable, receive either: (1) reinstatement of such Claim pursuant to Section 1124 of the Bankruptcy Code; (2) payment in full in Cash, plus interest to the extent entitled to interest under applicable law, on the later of (A) the Plan Effective Date, or (B) the date such payment is due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Claim; or (3) such other treatment rendering such Claim Unimpaired under the Bankruptcy Code, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Mezzanine Borrower Priority Claim.	Unimpaired	100%
8	Mezzanine Borrower General Unsecured Claims	Each Holder of an Allowed Mezzanine Borrower General Unsecured Claim shall, at the option of Mezzanine Borrower or JBL HoldCo, as applicable, receive either: (1) reinstatement of	Unimpaired	100%

		such Claim pursuant to Section 1124 of the Bankruptcy Code; (2) payment in full in Cash, plus interest to the extent entitled to interest under applicable law, on the later of (A) the Plan Effective Date, or (B) the date such payment is due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Claim; or (3) such other treatment rendering such Claim Unimpaired under the Bankruptcy Code, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Mezzanine Borrower General Unsecured Claim.		
9	Mezzanine Borrower Interests	Holding will retain its 100% Interest in Mezzanine Borrower.	Unimpaired	100%

IV.
FIRST DAY MOTIONS⁴

54. Concurrently with the filing of the Petitions, the Debtors filed certain applications, motions, and proposed orders. A summary of the relief requested in each First Day Motion is set forth below. I have reviewed each of the First Day Motions referenced below, and respectfully submit that the relief requested in each First Day Motions is necessary and appropriate and should be granted. I believe the requested relief is critical to stabilizing the Debtors' business during the Chapter 11 Cases and preserving asset value. Moreover, the relief requested in each of the First Day Motions is necessary to avoid immediate and irreparable harm to the Debtors' estate.

⁴ Capitalized terms used but not otherwise defined in this section shall have the meaning ascribed to them in the applicable First Day Motion.

A. Motions Seeking Approval of Administrative Procedures and Related Relief

(1) Debtors' Motion for an Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors' Chapter 11 Cases (the "Joint Administration Motion")

55. The Debtors seek the joint administration of their Chapter 11 Cases for procedural purposes only. I believe that it would be far more practical and expedient for the administration of the Chapter 11 Cases if this Court were to authorize their joint administration. Joint administration will reduce costs and facilitate the administrative process by avoiding the need for duplicative notices, applications and orders. It is my understanding that no prejudice will befall any party by the joint administration of the Chapter 11 Cases, as the relief sought therein is solely procedural, and not intended to affect substantive rights.

(2) Debtors' Application for Appointment of Stretto as Claims and Noticing Agent (the "Stretto Retention Application")

56. The Debtors request entry of an order, pursuant to section 156(c) of title 28 of the United States Code and Local Rule 2002-1(f), authorizing the retention and appointment of Stretto as claims and noticing agent in the Chapter 11 Cases. I believe that the relief requested in the Stretto Retention Application will ease the administrative burden on the Clerk of the Court in connection with the Chapter 11 Cases. In addition, I have been advised by counsel that Stretto's retention is required by the Local Rules in light of the anticipated number of creditors in the Chapter 11 Cases.

57. Therefore, on behalf of the Debtors, I respectfully request that the Stretto Retention Application be approved.

B. Motions Seeking Operational Relief

(1) Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a), 345, 363, 1107(a) And 1108 of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Rule 2015-2, (I) Authorizing and Approving Continued Use of Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts and Business Forms, (III) Waiving the Requirements of Section 345(b) on an Interim Basis, and (IV) Granting Certain Related Relief (the "Cash Management Motion") ("Cash Management Motions")

58. Through the Cash Management Motion, the Debtors request: (i) authorization and approval of the Debtors' continued use of their existing cash management system; (ii) a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware to the extent that such requirements are inconsistent with (a) the Debtors' practices in connection with their existing cash management system, or (b) any action taken by the Debtors in accordance with any order granting the relief requested in this Motion or any other order entered in these Chapter 11 Cases; (iii) a waiver of the requirements of section 345(b) of the Bankruptcy Code with respect to the Debtors' deposit practices on an interim basis; and (iv) certain related relief.

59. In the ordinary course of business, the Debtors utilize a central cash management system to collect, transfer, and disburse funds generated by their operations (the "Cash Management System"). It is critical that the Debtors be able to consolidate management of cash and centrally coordinate transfers of such funds to efficiently and effectively operate their business. Any disruption to the Cash Management System would seriously harm the Debtors. Maintenance of the existing Cash Management System will prevent any unexpected or inopportune interruption to the Debtors' business operations while protecting the Debtors' cash for the benefit of their estates. Requiring the Debtors to change their Cash Management System at this critical time would, among other things, cause unnecessary disruption to the Debtors and their business affairs.

60. The Cash Management System provides significant benefits to the Debtors, including the ability to: (i) closely track, and thus control, all corporate funds; (ii) ensure cash availability; and (iii) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. A disruption in the Cash Management System could cause delays in the collection and disbursement of funds, thus impeding the Debtors' ability to avoid an unexpected or inopportune interruption in their operations during the pendency of these Chapter 11 Cases.

61. The Debtors' Chapter 11 Cases will be facilitated by preserving the "business as usual" atmosphere, and avoiding the distractions that would inevitably be associated with a substantial disruption in the Cash Management System. Furthermore, if enforced, the U.S. Trustee Guidelines would cause enormous disruption to the Debtors' business and would impair the Debtors' chapter 11 efforts. I believe that maintaining the Bank Accounts is necessary to avoid delays in paying debts incurred post-petition, and to ensure as smooth a transition into chapter 11 as possible. If the Debtors are required to transfer their existing Bank Accounts, it will be disruptive, time consuming, and expensive. Likewise, it would be costly and disruptive to require the Debtors to begin using new stationary and business forms.

62. Accordingly, on behalf of the Debtors, I respectfully request that the Cash Management Motion be approved.

(2) Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a) And 366 of the Bankruptcy Code, (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Payment, (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment, and (IV) Setting a Final Hearing Related Thereto (the "Utility Motion")

63. Through the Utilities Motion, the Debtors request the entry of interim and final orders, among other things: (a) prohibiting the Utility Companies from altering, refusing, or discontinuing Utility Services on account of pre-petition invoices, including the making of demands for security deposits or accelerated payment terms; (b) deeming the Utility Companies adequately assured of future payment; (c) establishing procedures for determining additional adequate assurance of future payment and authorizing the Debtors to provide additional adequate assurance of future payment to the Utility Companies; and (d) setting a final hearing related to the relief requested in the Utilities Motion.

64. The Utility Companies provide the Debtors with natural gas, electricity, telecommunications, internet connectivity, water, waste disposal and other similar services. The Utility Companies service the Resort. The Debtors could not operate their business or serve their customers in the absence of continuous Utility Services. Thus, any interruption in such services would disrupt the Debtors' day-to-day operations and be incredibly harmful to their business.

65. In general, the Debtors have established a good payment history with the Utility Companies, making payments on a regular and timely basis. To provide adequate assurance to the Utility Companies, as required under section 366 of the Bankruptcy Code, the Debtors propose to deposit a sum of \$17,795, which represents 50% of the Debtors' estimated monthly cost of Utility Services subsequent to the Petition Date, into a segregated account to be maintained during the pendency of the Chapter 11 Cases in the manner provided for in the Proposed Orders.

66. I believe and am advised that the Assurance Procedures are necessary, because if such procedures were not approved, the Debtors could be forced to address numerous additional adequate assurance requests by the Utility Companies in a disorganized manner during the critical first weeks of the Chapter 11 Cases. Moreover, a Utility Company could unilaterally determine, on or after the 30th day following the Petition Date, that it is not adequately assured of future payment and discontinuing service or making an exorbitant demand for payment to continue service.

67. Accordingly, on behalf of the Debtors, I respectfully request that the Utilities Motion be approved.

(3) Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a), 363 and 364 of The Bankruptcy Code, (I) Authorizing (A) Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection With Insurance Programs, Including Payment of Policy Premiums, and (B) Continuation of Insurance Premium Financing Programs; (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto, and (III) Scheduling A Final Hearing ("Insurance Motion")

68. The Debtors request the entry of an order authorizing, but not directing, the Debtors to (a) continue and, to the extent necessary, renew the Insurance Programs and pay policy premiums arising thereunder or in connection therewith, including any prepetition obligations arising in the ordinary course of business, and (b) continue the Financed Insurance Programs and enter into new premium financing programs, as necessary, under substantially similar terms, in the ordinary course of business, (ii) authorizing the Banks to honor and process check and electronic transfer requests related thereto, and (iii) scheduling a final hearing with respect to the foregoing.

69. In the ordinary course of business, the Debtors have maintained, and continue to maintain, among others, insurance programs for general liability, property, business automobile, crime and fidelity, cyber, kidnap and ransom, and umbrella and excess liability (collectively, the

“Insurance Programs”). Continuation of the Insurance Programs is essential for preserving the value of the Debtors’ assets and, in most cases, such coverage is required by the various contracts and laws that govern the Debtors. Furthermore, it is my understanding that, pursuant to the chapter 11 operating guidelines issued by the United States Trustee for Region 3 pursuant to 28 U.S.C. § 586, the Debtors are obligated to maintain certain insurance coverage, which coverage is provided by the policies included in the Insurance Programs.

70. Because it is not economically advantageous for the Debtors to pay the premiums on each of their Insurance Programs on an annualized basis, from time to time, in the ordinary course of business, the Debtors finance the premiums on certain of the Insurance Programs. If the Debtors are unable to continue making payments under their premium financing agreement, the financier may be permitted to terminate the Financed Insurance Programs. The Debtors would then be required to obtain replacement insurance on an expedited basis and likely at a significantly increased cost.

71. Accordingly, on behalf of the Debtors, I respectfully request that the Insurance Motion be approved.

(4) Debtors’ Motion for Entry of an Order (I) Excusing Compliance with Turnover Provisions of 11 U.S.C. § 543, (II) Authorizing the Receiver to Remain in Possession Pursuant to 11 U.S.C. § 543(d)(1), and (III) Granting Related Relief (the “Turnover Motion”)

72. As discussed more fully above, the Receivership Court appointed MCA Financial Group, LTD., by and through its Senior Managing Director, Keith Bierman, as the receiver for the Senior Borrower. Since June 4, 2021, the Receiver has been in possession and control of the Receivership Property, and has used such Receivership Property in furtherance of the Debtors’ ongoing business and operations.

73. In connection therewith, the Receiver has established a bank account, funded and maintained operations through advances from the Mezzanine Lender, worked collaboratively with the Resort's construction management firm, subcontractors, and key vendors and the Resort's management company, Auberge, and coordinated construction efforts related to the Project, including, but not limited to, approval of certain construction design changes necessary at the Resort, preparation and maintenance of cost to complete summaries and other critical financial analyses, and negotiations with key construction subcontractors and vendors related to contracts, construction scope, and payment terms. The Receiver also actively reviews and approves construction-related disbursements in order to maintain construction pace toward completion of the Resort. The Receiver is a key interface with Auberge, and communicates on a daily basis with Auberge concerning a variety of issues related to the ongoing operation of the Resort.

74. The Receiver has cooperated with the Debtors' restructuring efforts in all material respects, and continued to assist the Debtors in the days leading up to the Petition Date. Accordingly, to preserve the "business as usual" atmosphere at the Resort, and to minimize disruptions caused by these Chapter 11 Cases, I believe that it is in the Debtors' best interests to keep the Receiver in place at this time. Absent the relief requested in the Turnover Motion, I believe the Debtors would suffer immediate and irreparable harm.

75. Accordingly, on behalf of the Debtors, I respectfully request that the Turnover Motion be approved.

(5) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to pay Prepetition Trade and Other Unimpaired Claims in the Ordinary Course of Business, (II) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations, and (III) Granting Related Relief (the "Pay All Motion")

76. In the ordinary course of business, the Debtors rely on various entities to provide goods and services related to their business operations at the Resort (collectively, the "Ordinary Course Creditors"). The Ordinary Course Creditors include, without limitation, Auberge, certain general contractors and subcontractors providing construction services to the Debtors in connection with the ongoing construction and renovation efforts at the Resort, certain independent contractors who provide hourly labor at the Resort, and certain consultants who provide, among other things, interior design services and construction supervision, and other services at the Resort.

77. The goods, services and facilities provided by the Ordinary Course Creditors are necessary for the continued, uninterrupted operations of the Debtors' business at the Resort. I believe that the failure to pay the Ordinary Course Claims as they become due could result in many Ordinary Course Creditors refusing to provide essential goods and services or conditioning the delivery of such goods and services on compliance with commercially unreasonable terms. To avoid such result, and to ensure the continued timely supply of critical merchandise and services to the Debtors, I believe it is necessary to pay the Ordinary Course Creditors in the ordinary course of business. Moreover, as the Ordinary Course Creditors will all be paid in full or otherwise have their claims reinstated pursuant to the terms of the Plan, the relief requested only affects the timing of their payments and does not prejudice any party in interest.

78. As of the Petition Date, the Debtors estimate that the total amount of prepetition Ordinary Course Claims outstanding is approximately \$3,270,000. The Debtors estimate that approximately \$3,450,000 of the Ordinary Course Claims will become due and payable within the

next 30 days in the ordinary course of the Debtors' business. The following table summarizes the Debtors' good faith estimate of the total amount of each category of Ordinary Course Claims outstanding as of the Petition Date, including estimates for amounts coming due within 30 days of the Petition Date.

Type of Claim	Estimated Total Amount Outstanding as of Petition Date	Estimated Amount Due Within 30 Days of the Petition Date
Auberge Claims	\$0	\$1,100,000
Construction Contractor Claims	\$3,200,000	\$2,200,000
Independent Contractors Claims	\$50,000	\$100,000
Consultant Claims	\$20,000	\$50,000
Total:	\$3,270,000	\$3,450,000

79. The proposed interim and final orders, if entered, would authorize the Debtors to pay the claims of all Ordinary Course Creditors in the ordinary course of business in accordance with prepetition practices. I believe that the requested relief inures to the benefit of all parties in interest.

80. Accordingly, on behalf of the Debtors, I respectfully request that the Pay All Motion be approved.

(6) Debtors’ Motion for Entry of an Order (A) Scheduling Combined Hearing to Consider (I) Approval of Disclosure Statement and Confirmation of Prepackaged Plan; and (II) Establishing an Objection Deadline to Object to Disclosure Statement and Plan; (B) Approval of Solicitation Procedures and Forms of Ballots, (C) Approving the Form and Manner of Notice of Combined Hearing, Objection Deadline, and Notice of Commencement; (D) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases; (E) Extending Time, and Upon Plan Confirmation, Waiving of Requirements to (I) Convene Section 341 Meeting, and (II) File Statements of Financial Affairs and Schedules of Assets and Liabilities; and (F) Granting Related Relief (the “Scheduling Motion”)

81. In connection with the DIP Facility and the Senior DIP Loan (each as defined in the DIP Financing Motion), the Debtors are bound by certain milestones, including, but not limited to, deadlines for entry of a confirmation order and consummation of the Plan. In light of these milestones and the prepackaged nature of these Chapter 11 Cases, the Debtors have filed the Scheduling Motion, seeking an order scheduling a combined hearing with respect to the approval of their Disclosure Statement (which describes the Debtors’ proposed restructuring and the related transactions in detail and its effects on holders of claims against and interests in the Debtors), and confirmation of the Plan. Moreover, the Debtors seek related relief, including approval of the solicitation procedures, a waiver of the requirement to file Schedules and SOFAs and the need to convene a 341 meeting, given the terms of the Plan, the proposed unimpairment of allowed general unsecured creditors, and the limited resources available to the Debtors on a postpetition basis. The Debtors believe that it is imperative that the Plan be confirmed on the proposed timeline to avoid, among other things, brand value deterioration and to minimize the costs associated with a protracted chapter 11 proceeding and, accordingly, submit that the relief requested should be granted.

C. DIP Financing Motion

82. The Debtors have negotiated and reached agreement on post-petition financing, pursuant to which the Debtors, subject to Court approval, will be provided with the DIP Facility from the DIP Lenders and the Senior DIP Loan from the Senior Lender. I believe that the terms and amount of the proposed post-petition financing will permit the Debtors to meet their business and other obligations and to use Cash Collateral to, among other things, (A) permit the orderly continuation of their businesses; (B) pay certain Adequate Protection Payments; and (C) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. Specifically, the proceeds of the post-petition loans will provide the Debtors with the ability to fund day-to-day operations and meet administrative obligations during the Chapter 11 Cases.

83. As the Budget demonstrates, without the availability provided under the post-petition financing, the Debtors would be unable to prosecute these Chapter 11 Cases and conduct the contemplated Plan process. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the Debtors' going concern values and successful reorganization. The Debtors will not have sufficient sources of working capital and financing to operate their businesses throughout the Cases without access to the proposed post-petition financing and authorized use of Cash Collateral.

84. Under the circumstances of these Bankruptcy Cases, including the amount of the Prepetition Obligations (as defined in the Interim Order), the Debtors believe that it would have been highly unlikely, if not impossible, to obtain postpetition financing offers from third parties in light of the current state of the Hotel's operations. Even if the Debtors were able to do so, the Debtors would have faced difficulty obtaining the consent of the DIP Lenders and the Senior

Lender to a priming lien, and the Debtors hold few, if any, unencumbered assets to which a non-priming lien could attach. Further, seeking out a third party lender would have jeopardized the value maximizing transaction proposed through the Plan, including the payment in full of all General Unsecured Claims. Accordingly, the Debtors determined, in their business judgment, that the expense and risk involved in seriously pursuing alternative lenders would exceed any potential savings they might achieve over the DIP Facility and, to the extent that the DIP Facility is fully funded, the Senior DIP Loan.


85. I believe that the Prepetition Secured Parties have acted in good faith regarding the proposed post-petition financing and the Debtors' continued use of Prepetition Collateral (including Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their business (including the incurrence and payment of any adequate protection obligations and the granting of adequate protection liens), in accordance with the terms of the Interim Order.

86. I believe that the absence of the proposed post-petition financing and access to Cash Collateral would cause immediate and irreparable harm to the Debtors' estates, their creditors and other stakeholders, by compromising the Debtors' ability to, among other things, maintain their business relationships and pay vendors that are providing necessary services to the Debtors.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: August 30, 2021


/s/ _____
By: Michael Norvet

President, BL Santa Fe (Holding), LLC, the Sole
Member of BL Santa Fe (Mezz), LLC, the Sole
Member of BL Santa Fe, LLC

EXHIBIT A

(Restructuring Support Agreement)

THIS RESTRUCTURING SUPPORT AGREEMENT DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, REPRESENTATIONS, WARRANTIES, AND OTHER PROVISIONS WITH RESPECT TO THE TRANSACTIONS DESCRIBED HEREIN, WHICH TRANSACTIONS WILL BE SUBJECT TO THE COMPLETION OF DEFINITIVE DOCUMENTS INCORPORATING THE TERMS SET FORTH HEREIN, AND THE CLOSING OF ANY TRANSACTION SHALL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH DEFINITIVE DOCUMENTS AND THE APPROVAL RIGHTS OF THE PARTIES SET FORTH HEREIN AND IN SUCH DEFINITIVE DOCUMENTS, IN EACH CASE, SUBJECT TO THE TERMS HEREOF.

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (as amended, modified, or otherwise supplemented from time to time, this "Agreement"), dated as of August 29, 2021, is entered into by and among:

- (a) Evolution RE Bishops Lodge, LP ("Evolution");
- (b) BL Resort Investment, LLC ("BL Resort Investment");
- (c) Alexander James Walter ("Walter");
- (d) Rebecca Walter Dunn Irrevocable Trust ("Trust Guarantor")
- (e) Nunzio DeSantis ("DeSantis") (BL Santa Fe, Evolution, BL Resort Investment, Walter, Trust Guarantor, and DeSantis are sometimes collectively referred to herein as the, "Non-Debtor Affiliates" and each individually as a "Non-Debtor Affiliate");
- (f) DB Bishops Lodge LLC, a Delaware limited liability company (together with its successors and assigns, "Senior Lender");
- (g) Juniper Bishops, LLC ("Mezzanine Lender"); and
- (h) Senior Lender and Mezzanine Lender are sometimes collectively referred to herein as the "Non-Debtor Parties" and each individually as a "Non-Debtor Party."

Non-Debtor Affiliates, and the Non-Debtor Parties are collectively referred to herein as the "Parties" and each individually as a "Party."

RECITALS

WHEREAS, the Parties have engaged in good faith and arm's-length negotiations regarding a restructuring of the Debtors (defined below).

WHEREAS, BL Resort Investment, Evolution, and DeSantis are members of BL Santa Fe (Holding), LLC ("Holding") and collectively own approximately 91.5% of the membership interests in Holding.

WHEREAS, Holding is the sole member of BL Santa Fe (Mezz), LLC ("Mezzanine Borrower").

WHEREAS, Mezzanine Borrower is the sole member of BL Santa Fe, LLC ("Senior Borrower") (Mezzanine Borrower and Senior are collectively referred to herein as the "Debtors" and each individually as a "Debtor."

WHEREAS, the Parties have agreed to undertake and support a financial restructuring of the existing claims against and interests in the Debtors in accordance with the terms and subject to the conditions set forth in this Agreement and in the restructuring term sheet attached hereto as Exhibit A (including any schedules and exhibits attached thereto, the "Restructuring Term Sheet"), and the restructuring transactions contemplated therein to be implemented, subject to the Milestones (as defined below), through a plan of reorganization providing for the consummation of the restructuring (the "Restructuring") to be filed by the Debtors in connection with jointly administered cases (the "Chapter 11 Case") in the United States Bankruptcy Court for the District of Delaware or such other venue acceptable to the Parties (the "Bankruptcy Court") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Restructuring Term Sheet.

WHEREAS, Fortress Credit Co LLC ("Original Lender") made that certain loan in the maximum principal amount of up to \$43,000,000.00 (the "Senior Loan") to Senior Borrower, pursuant to that certain Loan Agreement, dated as of June 14, 2019, by and among Original Lender, as lender and agent, and Senior Borrower, as borrower, as assigned by Original Lender to Senior Lender, as supplemented by that certain Pre-Negotiation Agreement dated July 15, 2020 between Senior Borrower, Senior Lender, Richard F. Holland ("Holland"), an individual, DeSantis, Walter, Trust Guarantor, and together with Holland, DeSantis and Walter, collectively, the "Senior Loan Guarantors"), and as amended by that certain Loan Modification Agreement, dated as of September 17, 2020, by and among Senior Borrower, Senior Lender, and the Guarantors ("Senior Loan Modification") (as the same may be further amended, modified, supplemented and/or amended and restated from time to time, the "Senior Loan Agreement"), which Senior Loan is secured by, among other things, certain real and personal property owned by Senior Borrower. The Senior Loan is evidenced by certain "Loan Documents" as defined in the Senior Loan Agreement (the "Existing Senior Loan Documents").

WHEREAS, as a result of, among other things, the existence of a Shortfall, Carry Shortfall and/or Interest Shortfall (as each such term is defined in the Senior Loan Agreement) in an aggregate amount of not less \$9,000,000.00, including certain amounts funded by

Mezzanine Lender as protective advances in the amount of \$6,721,330.02, Senior Borrower's failure to timely achieve Substantial Completion by the Substantial Completion Date (as each such term is defined in the Senior Loan Agreement), and Senior Borrower's failure to timely repay the Senior Loan on the Initial Maturity Date (as such term is defined in the Senior Loan Agreement), Senior Borrower and Senior Loan Guarantors are in default under the Existing Senior Loan Documents.

WHEREAS, Mezzanine Lender made a mezzanine loan (the "Mezzanine Loan"; and together with the Senior Loan, the "Loans") to Mezzanine Borrower, pursuant to that certain Mezzanine Loan Agreement dated as of June 14, 2019, by and among Mezzanine Lender, as lender and as agent for lender ("Mezzanine Agent") and Mezzanine Borrower, as supplemented by that certain Pre-Negotiation Agreement dated as of July 15, 2020 by and among Mezzanine Lender, Mezzanine Agent, Mezzanine Borrower, Senior Borrower, and Holland, DeSantis, Walter, Trust Guarantor, and together with Holland, DeSantis and Walter, collectively, the "Mezzanine Loan Original Guarantors", and as amended by that certain Mezzanine Loan Modification Agreement dated as of September 17, 2020 (the "Mezzanine Loan Modification") by and among Mezzanine Borrower, Mezzanine Loan Original Guarantors, Mezzanine Agent and Mezzanine Lender (as the same may be further amended, modified, supplemented and/or amended and restated from time to time, the "Mezzanine Loan Agreement"), which Mezzanine Loan is secured by the membership interests in owned by Mezzanine Borrower in Senior Borrower. The Mezzanine Loan is evidenced by certain "Loan Documents" as defined in the Mezzanine Loan Agreement (the "Mezzanine Loan Documents").

WHEREAS, as a result of, among other things, the failure to pay shortfalls and interest payments (including certain amounts funded by Mezzanine Lender as protective advances under the Mezzanine Loan Documents) the failure to timely achieve substantial completion by the required date, and Mezzanine Borrower's failure to timely repay the Mezzanine Loan on the Initial Maturity Date (as such term is defined in the Mezzanine Loan Agreement), Mezzanine Borrower and Mezzanine Loan Original Guarantors are in default (collectively, the "Mezzanine Default") under the Mezzanine Loan Documents.

WHEREAS, the Debtors and Non-Debtor Affiliates have requested that Mezzanine Lender and Mezzanine Agent continue to make protective advances under the Mezzanine Loan Documents and Mezzanine Lender and Mezzanine Agent have agreed to provide debtor in possession financing under the Mezzanine Loan Documents in accordance with the terms and conditions set forth in the Restructuring Term Sheet, and the DIP Financing Orders (as defined below).

WHEREAS, the Parties desire to express to each other their mutual support and commitment in respect of the matters set forth in this Agreement and the Restructuring Term Sheet.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and

agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **DEFINITIONS: RULES OF CONSTRUCTION.**

(a) **Definitions.** The following terms shall have the following definitions:

"**Agreement**" has the meaning set forth in the preamble hereof, and includes, for the avoidance of doubt, the schedules and exhibits attached hereto including the Restructuring Term Sheet.

"**Alternative Transaction**" means, other than in the ordinary course of the Debtors' business, any dissolution, winding up, liquidation, reorganization, recapitalization, assignment for the benefit of creditors, merger, transaction, consolidation, business combination, joint venture, partnership, sale of assets (other than in ordinary course sales or sales of *de minimis* assets), financing (debt or equity, including any refinancing, in whole or in part, of the Mezzanine Loan), plan proposal, or restructuring of the Debtors (including any chapter 11 plan that is not the Chapter 11 Plan, but not including, for the avoidance of doubt, any amendments, modifications, or supplements to the Chapter 11 Plan related to effectuating a sale transaction pursuant to the Chapter 11 Plan, if applicable), other than the Restructuring.

"**Bankruptcy Code**" has the meaning set forth in the recitals hereof.

"**Bankruptcy Court**" has the meaning set forth in the recitals hereof.

"**Business Day**" means any day other than Saturday, Sunday, and any day that is a legal holiday or a day on which banking institutions in New York, New York are authorized by law or other governmental action to close.

"**Chapter 11 Case**" has the meaning set forth in the recitals hereof.

"**Chapter 11 Plan**" means the chapter 11 plan of reorganization of Debtors, as amended, modified, or supplemented (including any annexes, supplements, exhibits, term sheets, or other attachments thereto), filed in the Chapter 11 Case, which will be consistent in all material respects with this Agreement and the Restructuring Term Sheet and is subject to the approval of each Non-Debtor Parties.

"**Claim**" means any "claim" as that term is defined in section 101(5) of the Bankruptcy Code.

"**Confirmation Order**" means an order entered by the Bankruptcy Court confirming the Chapter 11 Plan and that is otherwise consistent with this Agreement and the Restructuring Term Sheet.

"**Definitive Documents**" means the documents that are necessary or

desirable to implement, or otherwise relate to, the Restructuring, which documents shall in each case be consistent with this Agreement and in form and substance acceptable to the Parties, including (i) all motions, proposed court orders, and other documents that Debtors file on or after the Petition Date and seeks to have heard on an expedited basis at the "first day hearing" (the "First Day Motions"), including, but not limited to, any motion authorizing Debtors to pay prepetition Claims of certain employees or critical vendors, (ii) the Chapter 11 Plan (including any ballots related thereto), (iii) any supplement to the Chapter 11 Plan, (iv) the Disclosure Statement, (v) the Disclosure Statement Order, if any, (vi) the Confirmation Order, (vii) the Organizational & Transactional Documents, (viii) the DIP Financing Orders, (ix) any motions seeking approval of the DIP Financing Orders, (x) any filings seeking to assume or to assume and assign, or that would have the effect of assuming, or assuming and assigning, any executory contract or unexpired lease (including related cure amounts), (xi) any document filed by the Debtors in the Chapter 11 Case to implement any of the foregoing, and (xii) any other documents (including any agreements, instruments, schedules, or exhibits) related to or contemplated in the foregoing clauses (i) through (xi). The Definitive Documents listed in (i) must be acceptable to the Non-Debtor Parties in their reasonable discretion and the other Definitive Documents must be acceptable to the Non-debtor Parties in their sole discretion.

"DIP Financing" means the post-petition financing provided by Mezzanine Lender and, in the event such financing is exhausted, by Senior Lender, in accordance with the DIP Financing Orders.

"DIP Financing Orders" means, collectively, the Interim DIP Financing Order and the Final DIP Financing Order.

"Disclosure Statement" means Debtors' disclosure statement that is consistent with this Agreement, including any exhibits, appendices, related documents, ballots, and procedures related to the solicitation of votes to accept or reject the Chapter 11 Plan for Debtors, in each case, as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof.

"Disclosure Statement Order" means an order entered by the Bankruptcy Court approving the Disclosure Statement and Solicitation Materials as containing, among other things, "adequate information" as required by sections 1125 and 1126(b) of the Bankruptcy Code, which may be the Confirmation Order.

"Effective Date" means the effective date of the Chapter 11 Plan filed in the Chapter 11 Case to consummate the Restructuring.

"Entity" means any "entity" as that term is defined in section 101(15) of

the Bankruptcy Code and also includes any other entity.

“Equity Participation Rights” means the Back-End Distribution Right as set forth in the Restructuring Term Sheet and further defined in the Equity Participation Agreement.

“Exit Facility” has the meaning set forth in the Restructuring Term Sheet.

“Final DIP Financing Order” means a final order to be entered by the Bankruptcy Court authorizing and approving Mezzanine Lender’s advances to the Debtors pursuant to and secured by the Mezzanine Loan Documents and the Senior Lender’s additional Senior DIP Loans under the circumstances set forth in the Final DIP Financing Order.

“Interest” means any common stock, limited liability company interest, equity security (as defined in section 101(16) of the Bankruptcy Code), equity, ownership, profit interest, unit, or share in the Debtors (including all options, warrants, rights, or other securities or agreements to obtain such an interest or share in the Debtors), whether or not arising under or in connection with any employment agreement and whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security.

“Interim DIP Financing Order” means an order to be entered by the Bankruptcy Court authorizing and approving Mezzanine Lender’s DIP Financing to the Debtors pursuant to and secured by the Mezzanine Loan Documents and, in the event the DIP Financing from Mezzanine Lender is exhausted, the DIP Financing to be provided by Senior Lender.

“Loans” has the meaning set forth in the recitals hereof.

“Milestones” means the dates set forth in Section 5(c).

“Organizational & Transactional Documents” means the: (i) certificate or articles of incorporation and bylaws, certificate of formation, partnership agreement, operating agreement, limited liability company agreement, and any similar documents of the Reorganized Companies; (ii) any documents reasonably required by Senior Lender with respect to the modification of the Existing Senior Loan Documents pursuant to the Chapter 11 Plan (the “Amended and Restated Senior Loan Documents”); and (iii) any documents necessary to document the Equity Participation Rights in Reorganized Mezzanine Borrower to be provided to Holding pursuant to the Chapter 11 Plan.

“Other Termination Event” has the meaning set forth in Section 8(d).

“Party” has the meaning set forth in the preamble hereof.

“Person” means a “person” as that term is defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual,

corporation, company, partnership (including any general or limited partnership), joint venture, limited liability company, unincorporated organization, firm, trust, business trust, estate, association, joint stock company, group, government, governmental agency or governmental unit (or any subdivision thereof), the United States Trustee, legal entity, and Entity (in all cases, whether as an individual, fiduciary, or otherwise).

"Petition Date" means the date on which the Debtors commence their Chapter 11 Case, which date shall be no later than August 30, 2021 unless otherwise agreed by the Parties.

"Proceeding" has the meaning set forth in Section 13.

"Reorganized Companies" means Reorganized Senior Borrower and Reorganized Mezzanine Borrower, as reorganized on the Effective Date.

"Reorganized Mezzanine Borrower" means Mezzanine Borrower, as reorganized on the Effective Date.

"Reorganized Senior Borrower" means Senior Borrower, as reorganized on the Effective Date.

"Restructuring" has the meaning set forth in the recitals hereof.

"Restructuring Support Period" means the period of time commencing on the Support Date and ending on the Termination Date.

"Restructuring Term Sheet" has the meaning set forth in the recitals hereof.

"Senior Lender Counsel" means (i) Gibson, Dunn & Crutcher LLP, and (ii) Richards Layton & Finger, PA., as local counsel to Senior Lender.

"Solicitation" means the solicitation of votes with respect to the Chapter 11 Plan pursuant to, and in compliance with, the Bankruptcy Code and any order of the Bankruptcy Court governing such solicitation.

"Solicitation Materials" means any solicitation materials distributed in connection with the Solicitation, including without limitation, the Disclosure Statement and the Chapter 11 Plan, in form and substance acceptable to the Bankruptcy Court.

"Support Date" means the date on which all of the following conditions have been satisfied or waived in accordance with this Agreement: (i) each of the Parties shall have executed and delivered counterpart signature pages to this Agreement each of the other Parties and (ii) the Debtors shall have paid all reasonable and documented fees and out of pocket expenses of Senior Lender for which an invoice has been received by the Debtors on or before the date that is one (1) Business Day prior to the Support Date.

"Termination Date" means the date on which this Agreement terminates in accordance with Section 8.

"Termination Event" means any Termination Event, Non-Debtor Parties' Termination Event, or Other Termination Event.

"Transfer" has the meaning set forth in Section 9.

- (b) Rules of Construction. When a reference is made in this Agreement to a Section, Exhibit, or Schedule, such reference shall be to a Section, Exhibit, or Schedule, respectively, of or attached to this Agreement unless otherwise indicated. Unless the context of this Agreement otherwise requires, (i) words using the singular or plural number also include the plural or singular number, respectively, (ii) the terms "*hereof*," "*herein*," "*hereby*" and derivative or similar words refer to this entire Agreement, (iii) the words "*include*," "*includes*" and "*including*" when used herein shall be deemed in each case to be followed by the words "*without limitation*," (iv) references to "\$," "*dollar*," or any other currency are to United States dollars, (v) all references to time of day refer to Eastern time, as in effect in New York, New York on such day, and (vi) the word "*or*" shall not be exclusive and shall be read to mean "*and/or*."

2. **INCORPORATION BY REFERENCE**. The Restructuring Term Sheet and the DIP Financing Orders are expressly incorporated herein by reference and made a part of this Agreement as if fully set forth herein. The terms and conditions of the Restructuring are set forth in the Restructuring Term Sheet; provided that the Restructuring Term Sheet is supplemented by the terms and conditions of this Agreement. In the event of any inconsistencies between the terms of this Agreement (excluding the Restructuring Term Sheet and the DIP Financing Orders) and the Restructuring Term Sheet or the DIP Financing Orders, the Restructuring Term Sheet or the DIP Financing Orders shall govern, as applicable.

3. **COVENANTS OF THE NON-DEBTOR PARTIES**.

(a) Affirmative Covenants of the Non-Debtor Parties. Subject to the terms and conditions hereof, for the duration of the Restructuring Support Period, each Non-Debtor Party shall:

- (i) negotiate the Definitive Documents, including providing comments promptly to any drafts of the Definitive Documents provided to the Non-Debtor Parties;
- (ii) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the transactions contemplated in the Restructuring Term Sheet or in this Agreement,

reasonably negotiate appropriate additional or alternative provisions to address any such impediment, provided that the Non-Debtor Parties are not required to waive or limit their substantive rights or extend any of the Milestones under any circumstances;

(iii) timely vote (when solicited to do so in accordance with this Agreement) all of its Claims or Interests (whether now or hereafter owned) to accept the Chapter 11 Plan, and not change or withdraw such vote;

(iv) opt in to, or not opt out of, any applicable third-party releases under the Chapter 11 Plan consistent with the terms of the Restructuring Term Sheet; provided that the form of such releases shall be acceptable to such Non-Debtor Party and shall not release the Senior Borrower or release any Guarantor from their liabilities under the Amended and Restated Senior Loan Documents that does not agree to be a Releasing Party under the Plan or that objects to confirmation of the Plan;

(v) promptly notify the Debtors and the other Parties, in writing in accordance with Section 22 hereof, of any material breach in respect of any of the obligations, representations, warranties, or covenants set forth in this Agreement, in each case, with respect to which it has actual knowledge; and

(vi) with respect to information received pursuant to this Agreement that is designated as confidential, to treat such information as confidential.

(b) Negative Covenants of the Non-Debtor Parties. Subject to the terms and conditions hereof, for the duration of the Restructuring Support Period, each Non-Debtor Party shall not:

(i) vote any of its Claims or Interests to reject or abstain from voting on the Chapter 11 Plan;

(ii) Subject to Section 8(g), change or withdraw (or cause to be changed or withdrawn) any such vote or release described respectively in Sections 3(a)(iii) and (iv) above;

(iii) Subject to Section 8(g), opt-out of, or fail to opt in to, any third-party release contemplated by the Restructuring; provided that, for the avoidance of doubt, such releases shall only be effective upon the occurrence of the Effective Date;

(iv) (A) directly or indirectly object to, delay, impede, or take any other action to interfere with, delay, or postpone acceptance, confirmation, or implementation of the Chapter 11 Plan or the Restructuring, (B) directly or indirectly solicit, encourage, propose, file,

support, participate in the formulation of or vote for, any restructuring, sale of assets, merger, workout, or plan of reorganization for the Debtors other than the Chapter 11 Plan or the Restructuring, or (C) otherwise take any action that could in any material respect interfere with, delay, or postpone the consummation of the Chapter 11 Plan or Restructuring;

(v) directly or indirectly initiate (or direct or encourage any agents, any official or unofficial committee, or any other Person to initiate) any action, including legal proceedings, that are materially inconsistent with, or that would materially delay, prevent, frustrate, or impede the approval, confirmation, or consummation, as applicable, of the Chapter 11 Plan or the Restructuring;

(vi) challenge or support any other party's challenge to the validity, enforceability, or priority of the Mezzanine Loan, Mezzanine Loan Documents, the DIP Financing Orders, the Senior Loan, or the Existing Senior Loan Documents; or

(vii) directly or indirectly support another party's objections to the Definitive Documents, Disclosure Statement, or the Chapter 11 Plan.

(c) The covenants of the Non-Debtor Parties in this Section 3 are several and not joint.

4. COVENANTS OF THE NON-DEBTOR AFFILIATES.

(a) Affirmative Covenants of the Non-Debtor Affiliates. Subject to the terms and conditions hereof, for the duration of the Restructuring Support Period, each Non-Debtor Affiliate, including any entity that the Non-Debtor Affiliate may directly or indirectly control, shall:

(i) negotiate the Definitive Documents in good faith, including providing comments promptly to any drafts of the Definitive Documents provided to the Non-Debtor Affiliates;

(ii) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the transactions contemplated in the Restructuring Term Sheet or in this Agreement, negotiate in good faith appropriate additional or alternative provisions to address any such impediment;

(iii) timely vote (when solicited to do so in accordance with this Agreement) all of their and Holding's Claims or Interests (whether now or hereafter owned) to accept the Chapter 11 Plan, and not change or withdraw such vote;

(iv) opt in to, or not opt out of, on their behalf and on behalf of

Holding, any applicable third-party releases under the Chapter 11 Plan;

(v) promptly notify the Debtors and the other Parties, in writing in accordance with Section 22 hereof, of any material breach in respect of any of the obligations, representations, warranties, or covenants set forth in this Agreement, in each case, with respect to which it has actual knowledge; and

(vi) with respect to information received pursuant to this Agreement that is designated as confidential, to treat such information as confidential.

(b) Negative Covenants of the Non-Debtor Affiliates. Subject to the terms and conditions hereof, for the duration of the Restructuring Support Period, each Non-Debtor Affiliate, including any entity that the Non-Debtor Affiliate may directly or indirectly control, shall not:

(i) vote any of their or Holding's Claims or Interests to reject or abstain from voting on the Chapter 11 Plan;

(ii) change or withdraw (or cause to be changed or withdrawn) any such vote or release described respectively in Sections 4(a)(iii) and (iv) above;

(iii) opt-out of, or fail to opt in to, any third-party release, on their behalf and Holding's behalf, contemplated by the Restructuring; provided that such release shall be deemed revoked and void *ab initio* at any time following termination of this Agreement (other than as a result of the occurrence of the Effective Date);

(iv) (A) directly or indirectly object to, delay, impede, or take any other action to interfere with, delay, or postpone acceptance, confirmation, or implementation of the Chapter 11 Plan or the Restructuring, (B) directly or indirectly solicit, encourage, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets, merger, workout, or plan of reorganization for the Debtors other than the Chapter 11 Plan or the Restructuring, or (C) otherwise take any action that could in any material respect interfere with, delay, or postpone the consummation of the Chapter 11 Plan or the Restructuring;

(v) directly or indirectly initiate (or direct or encourage any agents, any official or unofficial committee, or any other Person to initiate) any action, including legal proceedings, that are materially inconsistent with, or that would materially delay, prevent, frustrate, or impede the approval, confirmation, or consummation, as applicable, of the Chapter 11 Plan or the Restructuring;

(vi) challenge on their behalf and Holding's behalf, or support any

other party's challenge to the validity, enforceability, or priority of the Mezzanine Loan, Mezzanine Loan Documents, the DIP Financing Orders, the Senior Loan, or the Existing Senior Loan Documents; or

(vii) directly or indirectly support another party's objections to the Definitive Documents, Disclosure Statement, or the Chapter 11 Plan.

(c) The covenants of the Non-Debtor Affiliates in this Section 4 are several and not joint.

5. COVENANTS OF THE NON-DEBTOR AFFILIATES ON BEHALF OF THE DEBTORS.

(a) Affirmative Covenants of the Non-Debtor Affiliates on behalf of the Debtors. Subject to the terms and conditions of this Agreement and the requirements of the Bankruptcy Code, for the duration of the Restructuring Support Period, the Non-Debtor Affiliates shall cause each of the Debtors to:

(i) act in good faith and use commercially reasonable effort to support and successfully complete the Restructuring and all transactions contemplated under this Agreement, in accordance with the Milestones;

(ii) negotiate the Definitive Documents in good faith;

(iii) use commercially reasonable efforts to obtain any and all required governmental, regulatory, licensing, Bankruptcy Court, or other approvals (including, without limitation, any necessary third-party consents) necessary to implement or consummate the Restructuring;

(iv) provide prompt written notice to the Non-Debtor Parties between the date hereof and the Effective Date of (A) the occurrence, or failure to occur, of any event of which the Debtors knows (or, upon reasonable inquiry, should have known), which occurrence or failure would be likely to cause (1) any covenant of the Debtors contained in this Agreement not to be satisfied in any material respect or (2) any condition precedent contained in the Chapter 11 Plan or this Agreement not to timely occur or become impossible to satisfy, (B) receipt of any notice from any third-party alleging that the consent of such party is or may be required in connection with the transactions contemplated by the Restructuring, (C) receipt of any notice from any governmental unit with jurisdiction in connection with this Agreement or the transactions contemplated by the Restructuring that would prevent the consummation of the Restructuring or the Chapter 11 Plan, (D) receipt of any notice of any proceeding commenced, or, to the actual knowledge of the Debtors, threatened against the Debtors, relating to or involving or otherwise affecting in any material respect the transactions

contemplated by the Restructuring, and (E) any failure of the Debtors to comply with or satisfy, in any material respect, any covenant, condition, or agreement to be complied with or satisfied by it hereunder;

(v) deliver draft copies of all Definitive Documents, and other material pleading the Debtors intend to file with the Bankruptcy Court (but excluding retention applications, fee applications, and any declarations in support thereof or related thereto) to counsel to the Non-Debtor Parties at least three (3) Business Days prior to the date when the Debtors intend to file any such document; provided that if delivery of such document at least three (3) Business Days in advance is not reasonably practicable under the circumstances, such document shall be delivered as soon as otherwise practicable prior to filing); provided further that all such filings shall be in form and substance reasonably satisfactory to the Non-Debtor Parties;

(vi) Stipulate to the receiver remaining in office and retaining possession of the collateral for the Senior Loan throughout the Chapter 11 Case;

(vii) provide the Non-Debtor Parties and their advisors with, and direct its employees, officers, advisors, and other representatives to provide the Non-Debtor Parties and their advisors with, (A) reasonable access to the Debtors' books and records, (B) reasonable access to the management and advisors of the Debtors for the purposes of evaluating the Debtors' assets, liabilities, operations, businesses, finances, strategies, prospects, and affairs, and (C) responses to all reasonable diligence requests within a reasonable time based on the applicable circumstances to such diligence requests;

(viii) deliver periodic updates and reports regarding the Debtors' financial performance and the Chapter 11 Case as reasonably requested by the Non-Debtor Parties;

(ix) maintain its good standing under the laws of the state in which it is incorporated or organized;

(x) use its commercially reasonable efforts to preserve intact in all material respects its current business organizations, keep available the services of its current officers and material employees (in each case, other than voluntary resignations, terminations for cause, or terminations consistent with applicable fiduciary duties), and preserve in all material respects its relationships with customers, sales representatives, suppliers, distributors, and others, in each case, having material business dealings with the Debtors (other than terminations for cause or consistent with applicable fiduciary duties);

(xi) to the extent permitted under applicable law and confidentiality obligations, promptly notify the other Non-Debtor Parties in writing following the receipt, in writing, of notice of any material governmental, regulatory, or third-party complaints, litigations, investigations, or hearings (or communications indicating that the same may be contemplated or threatened);

(xii) to the extent permitted under applicable law and confidentiality obligations, provide notice of any written or oral proposal or other documents or written communications with respect to an Alternative Transaction received by the Debtors or its advisors, together with copies of any and all documents relating thereto, to Non-Debtor Parties, within three business days of the Debtors or its advisors' receipt thereof;

(xiii) seek a Confirmation Order that becomes effective and enforceable immediately upon its entry and seek to have the period in which an appeal thereto must be filed commence immediately upon its entry; and

(xiv) timely file and diligently prosecute a formal objection to any motion filed with the Bankruptcy Court by a party-in-interest seeking the entry of an order (A) directing the appointment of a trustee or examiner (with expanded powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code); (B) converting either of the Debtors' Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (C) dismissing either of the Debtors' Chapter 11 Cases, (D) modifying or terminating the Debtors' exclusive right to file or solicit acceptances of a chapter 11 plan, as applicable; or (E) challenging the validity, enforceability, perfection, or priority of, or seeking avoidance or subordination of, any portion of the Loans, or asserting any other cause of action against and/or with respect or relating to the Claims in respect of the Loans or the prepetition liens securing such Claims.

(b) Negative Covenants Non-Debtor Affiliates on behalf of the Debtors.

Subject to the terms and conditions of this Agreement and requirements of the Bankruptcy Code, for the duration of the Restructuring Support Period, except with the prior written consent of the Non-Debtor Parties or the Non-Debtor Parties professionals (acting at the direction of the Non-Debtor Parties), the Non-Debtor Affiliates shall cause the Debtors to not, directly or indirectly:

(i) (A) announce an intention not to pursue the Restructuring; (B) suspend or revoke the Restructuring; or (C) execute any agreements, instruments, or other documents (including any document relating to an Alternative Transaction or any modifications or amendments to any Definitive Documents) that, in whole or in part, are materially

inconsistent with this Agreement;

(ii) take any action, or encourage any other person or entity to take any action, directly or indirectly, that would reasonably be expected to breach or be inconsistent with this Agreement, or take any other action, directly or indirectly, that would reasonably be expected to interfere with the acceptance or implementation of the Restructuring, this Agreement, the Definitive Documents;

(iii) enter into any other restructuring support or similar agreement (including any settlement agreement) with respect to any proposed restructuring (including the Restructuring) with any creditor, equity holder, ad hoc group, or statutory committee that would be inconsistent with the Debtors' obligations under this Agreement or that would impair the Debtors' ability to consummate the Restructuring within the timeframe contemplated by this Agreement;

(iv) file any motion, pleading, or Definitive Documents with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement; or

(v) seek, solicit, or consummate any Alternative Transaction, or cause or allow any of their agents or representatives to solicit any Alternative Transaction.

(c) Restructuring Milestones: Subject to the terms and conditions of this Agreement and the requirements of the Bankruptcy Code, for the duration of the Restructuring Support Period, the Non-Debtor Affiliates shall cause the Debtors to use their commercially reasonable efforts to achieve the following Milestones:

(i) Promptly following the Support Date and, in any event, no later than 11:59 p.m. (ET) on August 30, 2021, or as soon thereafter as practicable, the Debtors shall file the Chapter 11 Case (for the avoidance of doubt, commencement of the Chapter 11 Cases remains subject to the approval of the governing bodies of the Debtors).

(ii) File with the Bankruptcy Court, on or before two (2) Business Days of the Petition Date, or as soon thereafter as practicable, the Chapter 11 Plan, which shall be in form and substance satisfactory to the Non-Debtor Parties in their sole discretion.

(iii) File with the Bankruptcy Court, on or before two (2) Business Days of the Petition Date, or as soon thereafter as practicable, the Disclosure Statement, and all related schedules, supplements, exhibits and orders (as applicable), in form and substance satisfactory to the

Non-Debtor Parties in their sole discretion.

(iv) Obtain the entry by the Bankruptcy Court of the Interim DIP Financing Order, in form and substance acceptable to the Non-Debtor Parties in their sole discretion on or before five (5) Business Days following the Petition Date, or as soon thereafter as practicable.

(v) Obtain the entry by the Bankruptcy Court of the Final DIP Financing Order, in form and substance acceptable to the Non-Debtor Parties in their sole discretion on or before twenty-five (25) calendar days following the Petition Date, or as soon thereafter as practicable.

(vi) Obtain a hearing on the Chapter 11 Plan before the Bankruptcy Court on or before fifty (50) calendar days following the Petition Date, or as soon thereafter as Bankruptcy Court's calendar permits.

(vii) Obtain the entry by the Bankruptcy Court of the Confirmation Order, in form and substance satisfactory to the Non-Debtor Parties in their sole discretion confirming the Chapter 11 Plan on or before sixty (60) calendar days following the Petition Date, or as soon thereafter as practicable.

(viii) No later than seventy-five (75) calendar days following the Petition Date, the Effective Date of the Chapter 11 Plan shall have occurred.

6. REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION.

(a) Each Party, severally and not jointly, represents and warrants to each other Party that the following statements are true, correct and complete as of the date hereof:

(i) all Parties that are entities, then such Party is validly existing and in good standing under the laws of its jurisdiction of incorporation, organization, formation or creation, and has all requisite corporate, partnership, limited liability company, trust or similar authority to enter into this Agreement and carry out the transactions contemplated hereby and perform its obligations hereunder. The execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary corporate, limited liability company, partnership, or other similar action on its part;

(ii) the execution, delivery, or performance by such Party of this Agreement does not and will not (A) violate any material provision of law, rule, court order, or regulation applicable to it or its charter or bylaws (or other similar governing documents), or (B) conflict with, result in a breach of or constitute (with due notice or lapse of time or

both) a default under any material contractual obligation to which it is a party;

(iii) the execution, delivery, or performance by such Party of this Agreement does not and will not require any material registration or filing with, consent or approval of, or notice to, or other action, with or by, any federal, state, or governmental, including judicial, authority or regulatory body; and

(iv) this Agreement is the legally valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

(b) The Non-Debtor Affiliates, on behalf of the Debtors, represent and warrant to the Non-Debtor Parties that they are aware of no pending agreements (oral or written) with respect to an Alternative Transaction as of the date hereof.

(c) The Non-Debtor Affiliates represent and warrant to the Non-Debtor Parties that they: (i) have all requisite authority to cause the Debtors and Holding to take the actions set forth in this Agreement, to carry out the transactions contemplated hereby, and perform their obligations hereunder; (ii) Non-Debtor Affiliates execution and delivery of this Agreement and the performance by the Non-Debtor Affiliates hereunder, including their obligation to cause the Debtors and Holding to take or refrain from taking certain actions, as set forth in this Agreement, have been duly authorized; (iii) the execution, delivery, or performance by the Non-Debtor Affiliates, including the obligation to cause the Debtors and Holding to take certain actions as set forth in this Agreement, does not and will not (a) violate any material provision of law, rule, court order, or regulation applicable to it or its charter or bylaws (or other similar governing documents), or (b) conflict with, result in a breach of or constitute a default under any material contractual obligation to which it is a party; and (iv) this Agreement is the legally valid and binding obligation of the Non-Debtor Affiliates, enforceable against the Non-Debtor Affiliates in accordance with its terms.

(d) Non-Debtor Affiliates represent and warrant to Non-Debtor Parties that they and any of their direct or indirect affiliates, including Holding: (i) do not hold any Claims against the Debtors; and (ii) other than any potential right to payment set forth in the Restructuring Term Sheet, they are not entitled to, and will not assert, any Claim or Interest against the Debtors or in the Bankruptcy Case.

(e) Non-Debtor Affiliates shall jointly and severally indemnify, defend and hold harmless the Non-Debtor Parties, their direct or indirect constituent

owners, each of their respective affiliates, and each of their respective successors, assigns, employees, agents, attorneys, officers, directors, shareholders and members (each, an “Indemnified Party” and together, the “Indemnified Parties”) from and against any and all other liabilities, obligations, actual losses, actual damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Non-Debtor Parties in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnified Party shall be designated a party thereto), that may be imposed on, incurred by, or asserted against such Indemnified Party in any manner relating to or arising out of any breach by Non-Debtor Affiliates of their obligations under, or any misrepresentation by Non-Debtor Affiliates contained, in this Agreement, the Restructuring Term Sheet, or the DIP Financing Orders (collectively, the “Indemnified Liabilities”). To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Non-Debtor Affiliates shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by each Indemnified Party.

7. **DEFINITIVE DOCUMENTS; GOOD FAITH COOPERATION; FURTHER ASSURANCES.**

(a) Each Party hereby covenants and agrees to cooperate with each other in good faith in connection with, and shall exercise commercially reasonable efforts with respect to the pursuit, approval, negotiation, execution, delivery, implementation, and consummation of the Restructuring, as well as the negotiation, drafting, execution, and delivery of the Definitive Documents.

(b) Subject to the terms hereof, each of the Parties shall take such action as may be reasonably necessary or reasonably requested by the other Parties to carry out the purposes and intent of this Agreement, including, solely in the case of the Debtors, making and filing any required regulatory filings, and shall refrain from taking any action that would frustrate the purposes and intent of this Agreement.

(c) The Parties agree, consistent with clause (a) of this Section 7, to negotiate in good faith the Definitive Documents and that, notwithstanding anything herein to the contrary, the Definitive Documents, including any motions or orders related thereto, shall not be inconsistent with this Agreement.

8. **TERMINATION OF AGREEMENT.**

(a) This Agreement shall terminate three (3) Business Days after delivery

of written notice, delivered in accordance with Section 22 hereof, (A) to the Debtors from a Non-Debtor Party at any time after and during the continuance of any Non-Debtor Party Termination Event, or (B) to the Non-Debtor Parties from the Debtors at any time after the occurrence and during the continuance of any Debtors Termination Event; provided that no Non-Debtor Party's rights and obligations hereunder can be terminated due to a Non-Debtor Party Termination Event unless the Non-Debtor Party(ies) has(have) made delivery of written notice to the Debtors after such occurrence stating that such event has occurred.

(b) A "Non-Debtor Party Termination Event" shall mean the occurrence of any of the following:

(i) The breach by any Party (other than by the Non-Debtor Party asserting such breach) in any material respect, of any of the undertakings, representations, warranties, or covenants of such Party set forth herein, including as set forth in Sections 4 or 5, to the extent such breach would have a material adverse effect on the Non-Debtor Party asserting such breach interests, as applicable, in connection with the Restructuring, this Agreement, or the Chapter 11 Plan, and that, if capable of being cured, remains uncured for a period of three (3) Business Days after the receipt of written notice of such breach from the Non-Debtor Party asserting such breach;

(ii) The Milestones set forth in Section 5(c) have not been achieved, extended, or waived by the date identified for completion of such Milestone (as such date may be extended or waived with the written consent of both Non-Debtor Parties);

(iii) The Definitive Documents are not in form and substance satisfactory to the Non-Debtor Parties as required by the definition of "Definitive Documents" set forth herein; provided that the Non-Debtor Party asserting such breach, must provide three (3) Business Days' written notice to the Debtors in accordance with Section 22 hereof of any such proposed termination and the Debtors shall have such time to amend or modify such Definitive Documents such that the applicable Definitive Documents shall be in form and substance satisfactory as required by the definition of "Definitive Documents" set forth herein to the Non-Debtor Parties;

(iv) The Debtors (i) files or announces in writing that it will pursue an Alternative Transaction or (ii) withdraws or announces in writing its intention not to support the Chapter 11 Plan;

(v) The dismissal of the Chapter 11 Case without the consent of the Non-Debtor Parties;

- (vi) Entry of an order appointing (a) an examiner with expanded powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code, or (b) a trustee in the Chapter 11 Case; provided, that the Receiver may remain in place;
- (vii) The Debtors actively support any person or entity seeking to take, or that takes, any of the actions set forth in the foregoing subsections (b)(iii)-(vi) or the following subsection (d);
- (viii) entry of an order that grants relief terminating, annulling, or materially modifying the automatic stay (as set forth in section 362 of the Bankruptcy Code) with regard to any material asset that, to the extent such relief were granted, would have a material adverse effect on the consummation of the Restructuring;
- (ix) entry of a DIP Financing Order that is not acceptable to both of the Non-Debtor Parties in their sole discretion;
- (x) the occurrence of a default or event of default under a DIP Financing Order that is not cured or disputed as provided by the DIP Financing Order;
- (xi) Termination of the commitments or acceleration of the obligations under the Existing Senior Loan Documents, Mezzanine Loan Documents or the DIP Financing Orders pursuant to their terms;
- (xii) The Debtors lose the exclusive right to file and/or solicit acceptances of a plan of reorganization (including the Chapter 11 Plan) without the Non-Debtor Parties' consent;
- (xiii) the Debtors file a motion, application, or adversary proceeding (or the Debtors support any such motion, application, or adversary proceeding filed or commenced by any third party) challenging the validity, enforceability, perfection, or priority of, or seeking avoidance or subordination of, any portion of a Non-Debtor Party's Claims or asserting any other cause of action against a Non-Debtor Party or with respect or relating to such Non-Debtor Party's Claim, the Existing Senior Loan Documents, the Mezzanine Loan Documents, or the prepetition liens securing the Claims arising thereunder, or any other party in interest obtains an order granting that party standing to file or commence any such action
- (xiv) Any representation or warranty in this Agreement made by a Party (other than by the Non-Debtor Party asserting such breach) shall have been untrue in any material respect when made;
- (xv) without the prior consent of the Non-Debtor Parties, a Debtor (A)

voluntarily commences any case or files any petition seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, or similar law now or hereafter in effect except consistent with this Agreement, (B) consents to the institution of, or fails to contest in a timely and appropriate manner, any involuntary proceeding or petition described above, (C) files an answer admitting the material allegations of a petition filed against it in any proceeding, (D) applies for or consents to the appointment of a trustee or an examiner pursuant to section 1104 of the Bankruptcy Code in the Chapter 11 Case, (E) makes a general assignment or arrangement for the benefit of creditors or (F) takes any corporate action for the purpose of authorizing any of the foregoing; or

(xvi) The occurrence of an Other Termination Event.

(c) An "Other Termination Event" shall mean the occurrence of any of the following:

(i) Any governmental authority, including the Bankruptcy Court, any regulatory authority or court of competent jurisdiction, issues any ruling, judgment, or order enjoining the consummation of, or rendering illegal, a material portion of the Restructuring, which ruling, judgment, or order has not been not stayed, reversed, or vacated within twenty (20) Business Days after such issuance;

(ii) Any court of competent jurisdiction has entered a final, non-appealable judgment or order declaring this Agreement to be unenforceable;

(iii) At 11:59 p.m. (Eastern Time) on the date that (A) an order is entered by the Bankruptcy Court or a court of competent jurisdiction denying confirmation of the Chapter 11 Plan (unless directly caused by a default by any Non-Debtor Parties of its obligations hereunder, in which event the Non-Debtor Parties shall not have the right to terminate under this clause (d)(iii)) or (B) an order confirming the Chapter 11 Plan is reversed or vacated; or

(iv) At 11:59 p.m. (Eastern Time) on the date that an order is entered by the Bankruptcy Court or a court of competent jurisdiction either converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code or dismissing the Chapter 11 Cases.

(d) Mutual Termination. This Agreement may be terminated by the mutual, written agreement of the Non-Debtor Affiliates and the Non-Debtor Parties.

(e) Automatic Termination. This Agreement shall also terminate

automatically without any further required action or notice immediately upon the earlier of the following: (i) the Effective Date or (ii) 11:59 p.m. (Eastern Time) November 30, 2021.

(f) **Effect of Termination.** Subject to the provisions contained in Section 15, upon the termination of this Agreement in accordance with this Section 8, this Agreement shall become void and of no further force or effect, and each Party shall, except as otherwise provided in this Agreement, be immediately released from its respective liabilities, obligations, commitments, undertakings, and agreements under or related to this Agreement, shall have no further rights, benefits, or privileges hereunder, and shall have all the rights and remedies that it would have had and shall be entitled to take all actions, whether with respect to the Restructuring or otherwise, that it would have been entitled to take had it not entered into this Agreement and no such rights or remedies shall be deemed waived pursuant to a claim of laches or estoppel; **provided** that in no event shall any such termination relieve a Party from liability for its breach or non-performance of its obligations hereunder before the date of such termination; and provided further that the DIP Financing Order, including the provisions therein providing adequate protection, waiving rights to challenge liens and claims, and providing for termination of the automatic stay upon default, shall be fully enforceable notwithstanding any such termination.¹ Upon any termination of this Agreement prior to the Effective Date, each of the Non-Debtor Parties' and Non-Debtor Affiliates votes on and releases provided in connection with the Chapter 11 Plan shall be automatically deemed to be withdrawn and void *ab initio* without further order of the Bankruptcy Court, and without the consent of the Debtors, irrespective of whether or not any voting deadline or similar deadline or bar has passed.

Any of the dates set forth in this Section 8 may be extended by written agreement among the Parties.

9. TRANSFER OF CLAIMS. Each Party agrees that, during the Restructuring Support Period, it shall not sell, transfer, loan, issue, pledge, hypothecate, assign, or otherwise dispose of (each, a "Transfer"), any of its Claims or Interests or any option thereon or any right or interest therein or any other Claims against or Interests in the Debtors unless the transferee agrees to be bound by this Agreement.

10. FORBEARANCE. Subject to the remainder of this Section 10, during the Restructuring Support Period, each Non-Debtor Party and Non-Debtor Affiliate hereby agrees to forbear from the exercise of any rights or remedies it may have with respect to its respective Claims or Interest under applicable law, in each case, solely to the extent that an exercise of any such rights or remedies would be inconsistent with the terms of this Agreement, including,

¹ GDC: Consequence of termination for Non-Debtor Party Termination Event will be termination of the automatic stay under the DIP Financing Order.

without limitation, the rights of Senior Lender and Mezzanine Lender to enforce their claims directly against each Guarantor (other than Holland). The parties agree that each Non-Debtor Party may exercise any rights or remedies it may have with respect to its respective Claims or Interest under applicable law directly against Holland and that Senior Lender and Mezzanine Lender may enforce their claims directly against Holland. For the avoidance of doubt, the forbearance set forth in this Section 10 shall automatically terminate, without the need for any further notice, upon a termination of this Agreement in accordance with the terms hereof and (a) shall not constitute a waiver with respect to any defaults or any events that trigger full recourse under the Guaranties, and (b) shall not bar any Non-Debtor Party or Non-Debtor Affiliate from filing a proof of claim or interest or taking action to establish the amount of its Claim or Interests. If the Transaction is not consummated, or if this Agreement is terminated for any reason other than the occurrence of the Effective Date of the Chapter 11 Plan, the Non-Debtor Parties fully reserve any and all of their rights, remedies, claims, and defenses, against the Debtors and against each Guarantor.

11. **AMENDMENTS AND WAIVERS.** Except as otherwise expressly set forth herein, (i) this Agreement, (ii) the Restructuring Term Sheet, (iii) the DIP Financing Order, and (iv) the Chapter 11 Plan (including any exhibits or schedules thereto or any supplement thereto), may not be materially waived, modified, amended, or supplemented except by the consent of both Non-Debtor Parties, in their sole discretion.

12. **EFFECTIVENESS.** This Agreement shall become effective and binding upon each Party on the Support Date.

13. **GOVERNING LAW; JURISDICTION; WAIVER OF JURY TRIAL.** This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the State of New York, without giving effect to the conflict of laws principles thereof. The Parties irrevocably agree that any legal action, suit, or proceeding (each, a "Proceeding") arising out of or relating to this Agreement brought by any Party or its successors or assigns shall be brought and determined exclusively in the Bankruptcy Court while the Chapter 11 Case is pending and the Parties hereby irrevocably and generally submit to the exclusive jurisdiction of the Bankruptcy Court; provided that if the Chapter 11 Case is not pending, or if the Bankruptcy Court does not have jurisdiction or abstains from deciding a matter arising hereunder, the Parties irrevocably agree to submit to ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND EACH PARTY WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER, AGENT AND LENDER HEREBY IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. The Parties agree not to commence any Proceeding arising out of or relating to this Agreement except pursuant to the immediately preceding sentence, as applicable. The Parties further agree that notice as provided in Section 22 shall constitute sufficient service of process and the Parties further waive any argument that such

service is insufficient. The Parties hereby irrevocably and unconditionally waive and agree not to assert that a Proceeding in the Bankruptcy Court or the alternate courts specified herein is brought in an inconvenient forum, the venue of such Proceeding is improper, or that the Bankruptcy Court lacks authority to enter a final order pursuant to Article III of the United States Constitution.

The Parties hereby waive, to the fullest extent permitted by applicable law, any right they may have to a trial by jury in any Proceeding directly or indirectly arising out of or relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory).

14. SPECIFIC PERFORMANCE/REMEDIES. It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement by any Party and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (including attorneys' fees and costs) as a remedy of any such breach, without the necessity of proving the inadequacy of money damages as a remedy. The Parties hereby waive any requirement for the security or posting of any bond in connection with such remedies.

15. SURVIVAL. Notwithstanding the termination of this Agreement pursuant to Section 8, Sections 1, 6, 13-24, and 26-27 shall survive such termination and shall continue in full force and effect in accordance with the terms hereof; provided that any liability of a Party for failure to comply with the terms of this Agreement shall survive such termination.

16. HEADINGS. The headings of the sections, paragraphs, and subsections of this Agreement are inserted for convenience only and shall not affect the interpretation hereof or, for any purpose, be deemed a part of this Agreement.

17. SUCCESSORS AND ASSIGNS; SEVERABILITY. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, permitted assigns, heirs, executors, administrators, and representatives; provided that nothing contained in this Section 17 shall be deemed to permit Transfers of the Claims or Interests. If any provision of this Agreement, or the application of any such provision to any Person or circumstance, shall be held invalid or unenforceable, in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision hereof and this Agreement shall continue in full force and effect. Upon any such determination of invalidity, the Parties shall negotiate in good faith to modify this Agreement to effectuate the original intent of the Parties as closely as possible in a reasonably acceptable manner so that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

18. SEVERAL, NOT JOINT, OBLIGATIONS. The agreements, representations, and obligations of the Parties under this Agreement are, in all respects, several and not joint.

19. RELATIONSHIP AMONG PARTIES; NO THIRD-PARTY BENEFICIARIES. Unless expressly stated herein, this Agreement shall be solely for the benefit of the Parties and no other Person shall be a third-party beneficiary hereof.

20. PRIOR NEGOTIATIONS; ENTIRE AGREEMENT. This Agreement, including the exhibits and schedules hereto (including the Restructuring Term Sheet), constitutes the entire agreement of the Parties, and supersedes all other prior negotiations regarding the subject matters hereof and thereof, except that the Parties acknowledge that any confidentiality agreements executed between the Debtors and Non-Debtor Party before the execution of this Agreement shall continue in full force and effect, according to their terms.

21. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall be deemed the same agreement. Execution copies of this Agreement delivered by facsimile or PDF shall be deemed an original for the purposes of this paragraph.

22. NOTICES. All notices hereunder shall be deemed given if contemporaneously sent by electronic mail, facsimile, courier or by registered or certified mail (return receipt requested) to the following addresses and facsimile numbers, or such other addresses of which notice is given pursuant hereto:

If to Evolution:
Attn: Brad C. Brooks
16775 Addison Road, Suite 525
Addison, TX 75001
Ph: 214.704.7027
bbrooks@titansecurities.com

If to Walter:
5420 Airport Blvd
Tampa, FL 33634
Ph: 813.380.5515
awalter@walsonventures.com

If to BL Resort Investment:
Attn: Alex Walter
5420 Airport Blvd
Tampa, FL 33634
Ph: 813.380.5515
awalter@walsonventures.com

If to Trust Guarantor:
Attn: Alex Walter
5420 Airport Blvd
Tampa, FL 33634
Ph: 813.380.5515
awalter@walsonventures.com

If to DeSantis:
1617 Hi Line Drive, Suite 190
Dallas, TX 75207
214.235.6048
ndesantis@nmdarch.com

If to Senior Lender:

DB Bishops Lodge LLC
1345 Avenue of the Americas, Floor 45
New York, NY 10105
Attn: David Moson
Ph: +1 212-798-6138
dmoson@fortress.com

and to:

DB Bishops Lodge
c/o Fortress Investment Group LLC
1345 Avenue of the Americas, Floor 45
New York, NY 10105
Attention: General Counsel-Credit Funds
E-mail: gc.credit@fortress.com

With a copy to:

DB Bishops Lodge LLC
5221 N. O'Connor Blvd, Suite 700
Irving, TX 75039
Attn: Eric Schleif
Ph: +1 972-476-1617
eschleif@fortress.com

and to:

Gibson, Dunn & Crutcher LLP
Attn: L. Mark Osher and Jeffrey C. Krause
333 South Grand Avenue
Los Angeles, CA 90071
Ph: (213) 229-7000
losher@gibsondunn.com
jkrause@gibsondunn.com

If to Mezzanine Lender:
Attn: Jay Wolf
7001 N. Scottsdale Rd., Suite 2050
Scottsdale, AZ 85253
Ph: +1 310-633-2365
jay@jreia.com

and

Attn: Nickolas Jensen
7001 N. Scottsdale Rd., Suite 2050
Scottsdale, AZ 85253
Ph: +1 480-840-8414
nick@jreia.com

With a copy to:

Snell & Wilmer, LLP
Attn: Christopher H. Bayley
400 E. Van Buren
Phoenix, AZ 85004
Ph: 602-382-6214
cbayley@swlaw.com

Any notice given by mail, or courier shall be effective when received. Any notice given by facsimile or electronic mail shall be effective upon transmission.

23. FEES AND EXPENSES. The Non-Debtor Affiliates shall cause the Debtors to pay or reimburse all reasonable and documented fees and expenses of the Senior Lender Counsel and Mezzanine Lender Counsel from the DIP Financing as provided in the DIP Financing Orders, including the fees and expenses of Gibson, Dunn & Crutcher LLP, Snell & Wilmer LLP, and Ashby & Geddes, within five (5) Business Days of receipt. For the avoidance of doubt, all such fees and expenses incurred and outstanding in connection with the Restructuring shall be paid on the Effective Date. Any documentation shall be redacted

to preserve privilege and work product and contain only the names of professionals/para professionals working on the matter, hourly rate and total number of hours worked.

24. **SETTLEMENT DISCUSSIONS.** This Agreement and the Restructuring Term Sheet are part of a proposed settlement of matters that could otherwise be the subject of litigation among the Parties. Pursuant to Rule 408 of the Federal Rules of Evidence, any applicable state rules of evidence, and any other applicable law, this Agreement and all negotiations relating thereto shall not be admissible into evidence in any Proceeding other than a Proceeding to enforce its terms.

25. **NO SOLICITATION; ADEQUATE INFORMATION.** This Agreement is not and shall not be deemed to be a solicitation of consents to any plan of reorganization. With respect to a Chapter 11 Plan, the acceptance of the Non-Debtor Parties will not be solicited until the Non-Debtor Parties have received a Disclosure Statement that provides adequate information under applicable bankruptcy or non-bankruptcy law, as applicable.

26. **CONSENTS AND ACKNOWLEDGMENTS.**

By executing this Agreement, each Party consents to the Debtors' use of its cash collateral and incurrence of debtor-in-possession financing expressly as authorized by, and subject to the terms of, the DIP Financing Orders.

27. **RELEASES.** The Parties agree that the Chapter 11 Plan shall provide for customary mutual releases and other exculpatory provisions, in each case, to the fullest extent permitted by law, in favor of the Non-Debtor Affiliates, the Non-Debtor Parties and the Debtors (including their respective current and former directors and officers, direct and indirect affiliates, subsidiaries, shareholders, equity holders, members, partners, professionals, principals, attorneys, accountants, investment bankers, consultants, agents, advisors, other representatives, and employees, each in their respective capacities as such); provided, however, that the Chapter 11 Plan shall not include a release of the Senior Borrower or any Guarantor (as defined in the Existing Senior Loan Documents), that does not agree to be a Releasing Party under the Plan or that objects to confirmation of the Plan, from Claims and liabilities arising under the Existing Senior Loan Documents or the Amended and Restated Senior Loan Documents nor a release of any claims against Holland or his affiliates.

28. **NO ADMISSIONS.** This Agreement shall in no event be construed as, or deemed evidence of, an admission or concession on the part of any Party of any claim or fault or liability or damages whatsoever. Each of the Parties denies any and all wrongdoing or liability of any kind and does not concede any infirmity in the claims and defenses that it has asserted or could assert. No Party shall have, by reason of this Agreement, a fiduciary relationship in respect of any other Party or any Person, or the Debtors, and nothing in this Agreement, expressed or implied, is intended to, or shall be construed as to, impose upon any Party any obligation in respect of this Agreement except as expressly set forth herein.

29. **DEBTORS FIDUCIARY DUTIES.** Nothing in this Agreement (including any provision that purports to be preemptory) shall require the Debtors or any of its subsidiaries or affiliates or any of their respective directors, managers, officers, or members to take any action (or to refrain from taking any action) to the extent that such party determines in good faith, upon advice of counsel, that doing so (or not doing so) would be inconsistent with its or their fiduciary obligations under applicable law; provided that, the Debtors shall provide written notice of such determination in accordance with Section 22 (as applicable) to the Non-Debtor Parties and Non-Debtor Affiliates within two (2) days after the date of such determination, and the Debtors shall engage in good faith discussions regarding the Restructuring (or any related transactions) with the Non-Debtor Parties and the Non-Debtor Affiliates following such notice. All Non-Debtor Parties reserve all rights they may have, including the right (if any) to challenge the exercise by the Debtors of its ability to terminate this Agreement under Section 8(c)(ii) hereof and pursuant to this Section 29. Notwithstanding anything to the contrary herein, nothing in this Agreement shall create any additional fiduciary obligations on the part of the Debtors or their affiliated entities, in such capacity, that did not exist prior to the date of this Agreement.

30. **BUSINESS DAY CONVENTION.** When a period of days under this agreement ends on a Saturday, Sunday, or any day in New York that is a legal holiday or a day on which banking institutions are authorized or required to be closed, then such period shall be extended to the specified hour of the next Business Day.

31. **REPRESENTATION BY COUNSEL.** The Parties agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

[Signature pages follow.]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first written above.

Evolution RE Bishops Lodge, LP,

By: 

Name: Brad Brooks

Title: Managing Partner

BL Resort Investment, LLC,

By: _____

Name: _____

Title: _____

Alexander James Walter,

By: _____

Rebecca Walter Dunn Irrevocable Trust

By: _____

Name: _____

Title: _____

Nunzio DeSantis,

By: _____

DB Bishops Lodge LLC,

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first written above.

Evolution RE Bishops Lodge, LP,

By: _____
Name: _____
Title: _____

BL Resort Investment, LLC,

By: Alex Walter
Name: Alex Walter
Title: Owner

Alexander James Walter,

By: Alex Walter

Rebecca Walter Dunn Irrevocable Trust

By: Alex Walter
Name: Alex Walter
Title: Trustee

Nunzio DeSantis,

By: _____

DB Bishops Lodge LLC,

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first written above.

Evolution RE Bishops Lodge, LP,

By: _____
Name: _____
Title: _____

BL Resort Investment, LLC,

By: _____
Name: _____
Title: _____

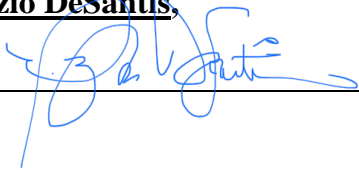
Alexander James Walter,

By: _____

Rebecca Walter Dunn Irrevocable Trust

By: _____
Name: _____
Title: _____

Nunzio DeSantis,

By:  _____

DB Bishops Lodge LLC,

By: _____
Name: _____
Title: _____

Juniper Bishops, LLC,

DocuSigned by:

By: 
Name: Ray Wolf
Title: Managing Partner

DB Bishops Lodge LLC,

By: _____
Name: _____
Title: _____

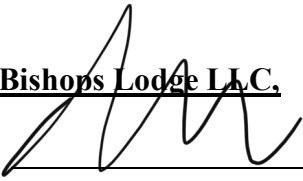
Juniper Bishops, LLC,

By: _____

Name: _____

Title: _____

DB Bishops Lodge LLC,

By:  _____

Name: _____

Title: _____

EXHIBIT A

RESTRUCTURING TERM SHEET

This term sheet (the “**Term Sheet**”) sets forth certain material terms of a proposed going concern financial restructuring (the “**Restructuring**”) of BL Santa Fe (Mezz), LLC (“**Mezzanine Borrower**”) and BL Santa Fe, LLC (“**Senior Borrower**”) (Mezzanine Borrower and Senior Borrower are sometimes collectively referred to herein as the “Debtors” and each individually as a “**Debtor**”). This Term Sheet summarizes certain key terms of a joint chapter 11 plan of reorganization in the Chapter 11 Case (as defined below) and will be attached to a Restructuring Support Agreement (the “**RSA**”)¹ among the Non-Debtor Affiliates and the Non-Debtor Parties. Capitalized terms used but not defined herein shall have the meaning provided therefor in the RSA.

This Term Sheet is not an offer to buy or sell any security nor a solicitation of acceptances of a chapter 11 plan within the meaning of Section 1125 of the Bankruptcy Code. Any such offer or solicitation will comply with all applicable securities laws and provisions of the Bankruptcy Code.

This Term Sheet is not binding and is subject to the satisfactory completion of due diligence and approval by the Non-Debtor Affiliates and the Non-Debtor Parties. In addition, no Party shall be bound with respect to any transaction contemplated hereunder until the execution and delivery of the final Restructuring Support Agreement acceptable to the Non-Debtor Affiliates and the Non-Debtor Parties.

This Term Sheet does not purport to summarize all of the terms, conditions, representations, warranties, and other provisions with respect to the transactions described herein, which transactions will be subject to the satisfactory negotiation and completion of definitive documents incorporating the terms set forth herein and others as may be mutually agreed. The closing of any transaction will be subject to the terms and conditions set forth in such definitive documents.

OVERVIEW

Transaction:

The Restructuring will be implemented through the Debtors’ commencement of chapter 11 cases (the “**Chapter 11 Case**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) and pursuit of a chapter 11 plan of reorganization in the Chapter 11 Case (the “**Chapter 11 Plan**”), by the Debtors, which Chapter 11 Plan shall be in form and substance satisfactory to the Non-Debtor Affiliates and the Non-Debtor Parties in their sole discretion and provide for, among other things:

- Mezzanine Borrower shall convey 100% of the membership interests in Senior Borrower to Juniper BL HoldCo, LLC (“**JBL HoldCo**”), a Delaware limited liability company and wholly owned subsidiary of Mezzanine Lender in full satisfaction of Mezzanine Lender’s claims and the guarantees securing same (the “**Transaction**”).

¹ Capitalized terms used herein but not otherwise defined have the meanings given to them in the RSA.

- Upon the consummation of the Transaction (the “**Closing**”), Mezzanine Lender, JBL HoldCo, and Mezzanine Borrower will enter into an equity participation agreement (the “**Equity Participation Agreement**”) substantially upon the terms set forth in this Term Sheet, pursuant to which JBL HoldCo would issue to Mezzanine Borrower the economic entitlement to receive from JBL HoldCo certain distributions upon the terms set forth in this Term Sheet (the “**Back-End Distribution Right**”).
- At Closing, Senior Borrower shall execute Amended and Restated Senior Loan Documents.

In exchange for support of the Chapter 11 Plan and other material terms set forth herein, the Debtors will implement a chapter 11 process in accordance with the Milestone deadlines set forth in the RSA.

DIP Financing

The Debtors will obtain debtor-in-possession financing (the “**DIP Financing**”) from Mezzanine Lender and, if the Mezzanine Lender funding is exhausted, additional DIP Financing from the Senior Lender, on the terms and conditions set forth in the order approving DIP Financing substantially in the form attached hereto (the “**Proposed DIP Order**”) and otherwise acceptable to the Non-Debtor Affiliates and the Non-Debtor Parties. The Proposed DIP Order shall be in form and substance acceptable to the Non-Debtor Parties in their sole discretion.

Adequate Protection for Senior Lender

Senior Lender shall consent to the DIP Financing (subject to approval of terms) and, if the DIP Financing provided by the Mezzanine Lender is exhausted, may provide up to \$2.6 million of additional DIP Financing. The DIP Financing provided by the Mezzanine Lender shall not be secured by liens on any of the Senior Lender’s collateral, and the DIP Financing provided by the Senior Lender shall be senior in all respects to the DIP Financing provided by the Mezzanine Lender. Senior Lender will also consent to the use of cash collateral on the terms set forth in the Proposed DIP Order, which includes, among other things, the following forms of adequate protection (all of which shall be in form and substance satisfactory to Senior Lender in its sole discretion):

- monthly payment of interest in cash during the Chapter 11 Case at the non-default contract rate, with default interest of an additional 5% under Section 2.2.1 of the Senior Loan Agreement to accrue in kind on account of the Claims under the Senior Loan Agreement, subject to forgiveness on the Effective Date if the conditions to the Closing are satisfied;
- superpriority adequate protection claims and liens;
- reimbursement of reasonable and documented fees and expenses of advisors to Senior Lender (including Gibson, Dunn & Crutcher LLP and Richards, Layton & Finger, PA). Among other things, the Proposed DIP Order shall also set forth the Debtors’ stipulations as to amount of claims, validity of liens and other matters with respect to the Senior Loan Agreement, the obligations thereunder and the

liens and security interests securing such obligations and provide standard waivers; and

- The Non-Debtor Affiliates are not committing to fund the cash payments to be made to the Senior Lender and anticipate that these payments will be funded from the proceeds of the DIP Financing, but failure to pay any such amounts shall constitute an Event of Default under the RSA and the DIP Financing whether or not the DIP Financing is sufficient to pay the amounts due hereunder.

TRANSACTION STRUCTURE

- Property:** Real property located at 1297 Bishops Lodge Road, Santa Fe, New Mexico 87506, upon which is being developed (i) a ninety-six (96) key hotel, (ii) two (2) Residences encompassing approximately 6,139 total square feet, and (iii) ten (10) Residences Sites, all as more particularly described in the Mezzanine Loan Agreement.
- Purpose:** Consistent with this Term Sheet and the RSA, JBL HoldCo will engage in the business of, directly or indirectly, through Senior Borrower and one or more other entities: (a) purchasing, owning, financing, refinancing, developing, operating, leasing, managing, holding for investment, exchanging, selling, and disposing of the Property; (b) acquiring, owning, holding for investment, and disposing of ownership interests in entities that directly or indirectly own the Property; and (c) such other activities as are related to or incidental to the foregoing.
- Definitive Transaction Documents:** All Parties will work diligently and in good faith to negotiate and execute the documentation necessary or advisable to effect the Transaction including the RSA, the Chapter 11 Plan and disclosure statement, and the final DIP Financing order.
- Initial Capital:** Upon the Closing, the Equity Participation Agreement will provide that Mezzanine Lender's beginning capital balance in JBL HoldCo (the "**Initial Capital Contribution**") for the purpose of determining the Back-End Participation Amount (as defined below) payable to Mezzanine Borrower pursuant to the section entitled "Waterfall Distribution" below after a return of capital to the Mezzanine Lender and payment to Mezzanine Lender of the Preferred Return and the Minimum Multiple (as each of those terms are defined below) would be equal to the then-current payoff amount of the Mezzanine Loan as of the date of Closing (including but not limited to the then-outstanding principal balance, inclusive of all protective advances now or hereafter made by Mezzanine Lender, the deferred portion of current interest payable from October 1, 2020 through the Closing, but excluding all other PIK Interest Accrual Monthly Amount, Exit Fee or Minimum Return Amount), which amount as of the date hereof is approximately [\$33,594,752.40]² and all Expenses (as defined below).

² Assumes filing date of 8/30/2021.

Upon the Closing, all expenses of Mezzanine Lender, including, without limitation, due diligence expenses and legal fees and costs incurred by Mezzanine Lender in connection with the documentation and effectuation of the Transaction (collectively, “**Expenses**”) will be capitalized and included in the Initial Capital Contribution.

Also upon the Closing, Mezzanine Lender will contribute additional cash to JBL HoldCo as necessary to cover the items set forth below in an approximate amount of [\$1,075,000] (the “**Additional Cash Contribution**”) and will cause JBL HoldCo to use the Additional Cash Contribution to (a) pay certain accounts payable items of Senior Borrower included in the current cost to complete, independently verified by EBI, and approved by Mezzanine Lender on or before the Closing in its discretion, to the extent not already covered by a protective advance on account of the Shortfall (as such term is defined in the Senior Loan Agreement) (collectively, “**Approved Payables**”); and (b) pay all allowed administrative, priority and unsecured claims of the Debtors required to be paid by the Chapter 11 Plan. Unsecured claims other than as set forth above (including, without limitation, pre-bankruptcy legal costs and expenses of the Non-Debtor Affiliates incurred in connection with the Property and any matters related thereto) will not be covered by the Additional Cash Contribution or otherwise funded by Mezzanine Lender, JBL HoldCo, Senior Lender or Senior Borrower, and must be assumed, funded through contributions to Mezzanine Borrower, satisfied, or eliminated by the Non-Debtor Affiliates or the Plan withdrawn, but withdrawal of the Plan without the prior written consent of both the Mezzanine Lender and the Senior Lender shall constitute an Event of Default under the RSA and the DIP Financing.

Mezzanine Lender shall not be required to contribute additional capital to JBL HoldCo or Senior Borrower beyond the Initial Capital Contribution and the Additional Cash Contribution. All capital contributions made by Mezzanine Lender to JBL HoldCo at any time (including without limitation, the Initial Capital Contribution and the Additional Cash Contribution) are hereinafter referred to collectively as the “**Mezzanine Lender Capital Contributions**”.

Additional Equity Investment by Members of BL Santa Fe (Holding), LLC:

At Mezzanine Lender’s sole and absolute discretion (which shall, without limitation on the foregoing, be subject to (1) compliance with Mezzanine Lender’s KYC requirements, internal policies and procedures, and applicable law; (2) obtainment of required third party approvals (including, but not limited to, any approval required by Senior Lender or any replacement lender); (3) satisfaction of required investor qualifications and minimum investment thresholds and completion of documentation; and (4) with respect to contributions of additional cash (as opposed to utilization of Capital Credits), the ability of JBL HoldCo to utilize the additional capital), within fifteen (15) business days after the Closing, each of the Members of BL Santa Fe (Holding), LLC may be permitted to participate in the investment in JBL HoldCo in an aggregate amount equal to (a) \$5,000,000 plus (b) the total amount of

the Capital Credits described below (the “**Participation Cap**”), each as a passive investor in a Juniper-managed vehicle upon substantially the same economic terms as other similarly situated investors (including management fees and carried interest payable to the manager). If the collective demand for participation in the investment by the Members of BL Santa Fe (Holding), LLC exceeds the Participation Cap, each Member’s participation amount will be equal to the product of (x) \$5,000,000 multiplied by (y) such Member’s percentage interest in BL Santa Fe (Holding), LLC immediately prior to the investment (“**Pro Rata Portion**”); provided, however, that the Pro Rata Portion of each Member shall be adjusted so that the Pro Rata Portion of any Member who has contributed in excess of its proportionate share of Capital Credits shall be increased to allow such Member to obtain credit for the proportionate amount actually funded by such Member with respect to the items set forth in clauses (ii) (subject to the Repaid Loan Amount) and (iii) (subject to the BK Cost Cap) below. Each Member must submit its commitment amount to Mezzanine Lender in writing on or before the date that is five (5) business days after Closing. The closing of the additional investment shall occur on the date that is ten (10) business days after Closing (the “**Additional Investment Date**”). Each Member that invests such Member’s Pro Rata Portion in full on the Additional Investment Date (an “**Exercising Member**”) shall have a right of over-allotment such that if any other Member has not invested such other Member’s full Pro Rata Portion (each, a “**Non-Exercising Member**”), such Exercising Member may invest its Pro Rata Portion of such Non-Exercising Member’s non-exercised allotment on or before the date that is five (5) business days after the Additional Investment Date. The investment may be made with (i) cash; (ii) using a credit for any documented bankruptcy costs of the Debtors actually funded by such Member, up to an aggregate amount of \$750,000 for all costs funded by all Members (the “**BK Cost Cap**”) (with all Members being afforded the opportunity prior to the Additional Investment Date to contribute to BL Santa Fe (Holding), LLC their pro rata share of such amount); (iii) using a credit for any amounts funded by such Member to repay the loan made by Kathleen K. Peters and Gerald P. Peters, III, Trustees of the Kathleen K. Peters and Gerald P. Peters, III Revocable Trust, to certain of the Non-Debtor Affiliates and restated as of May 29, 2014 in the original principal amount of \$1,000,000 with such repayment totaling \$1,097,055 (the “**Repaid Loan Amount**”) and being allocated to the Members in accordance with the amount actually contributed toward such repayment by such Member (with all Members being afforded the opportunity prior to the Additional Investment Date to contribute to BL Santa Fe (Holding), LLC their pro rata share of such Repaid Loan Amount); or (iv) a combination of (i), (ii) and (iii) (the credits set forth in (ii) and (iii) collectively being referred to herein as the “**Capital Credits**”). For the avoidance of doubt, no Member of BL Santa Fe (Holding), LLC would have any right or authority to exercise any voting right or any right to participate in the management of, or take part in or interfere in any manner with the management, conduct or control of the business or affairs of, Senior Borrower, JBL HoldCo, Mezzanine

Lender, or such Juniper-managed vehicle by virtue of such investment. This right is non-assignable.

- Senior Loan:** The Transaction would include a restructuring of the Senior Loan and the execution and delivery of Amended and Restated Senior Loan Documents on terms acceptable to Senior Lender in its respective sole discretion that contain the financial terms described in **Exhibit 1**. (the “**Amended and Restated Senior Loan Documents**”).
- Preferred Return:** Any unreturned Mezzanine Lender Capital Contributions shall accrue a preferred return (the “**Preferred Return**”) at an effective rate of thirty percent (30%) per annum, compounding annually.
- Minimum Multiple:** The membership interests of Mezzanine Lender in JBL HoldCo shall be entitled to earn a 1.90x minimum multiple return on all Mezzanine Lender Capital Contributions (the “**Minimum Multiple**”) prior to any distributions to Mezzanine Borrower.
- Distribution Waterfall:** No distributions will be made until the Senior Loan is paid in full. Thereafter, distributions of available cash flow and/or sales proceeds from JBL HoldCo, as determined by Mezzanine Lender (in its sole discretion), after the payment of all reasonable and necessary expenses, including, without limitation, all obligations under the Senior Loan and payment of undisputed development, architectural, hotel management and asset management fees, and the establishment of reasonable reserves, all as determined by Mezzanine Lender in its sole discretion, would be distributed on at least a quarterly basis in the following priority:
- (a) First, to Mezzanine Lender to pay the Preferred Return;
 - (b) Second, to Mezzanine Lender until all Mezzanine Lender Capital Contributions have been returned and Mezzanine Lender has achieved the Minimum Multiple (inclusive of distributions under this clause (b) and distributions of Preferred Return pursuant to clause (a)); and
 - (c) Thereafter, 30% to Mezzanine Lender and 70% to Mezzanine Borrower (the “**Back-End Participation Amount**”).
- Profit and Loss Allocations:** The Equity Participation Agreement will include a provision for JBL HoldCo to allocate the profits and losses corresponding to the Back-End Participation Amount to Mezzanine Borrower. For U.S. federal, state and local income tax purposes, Mezzanine Borrower shall be the holder of a “profits interest” in JBL HoldCo within the meaning of Revenue Procedure 93-27, 1993-2 C.B. 343. To the extent the Back-End Distribution Right is treated as a limited liability company interest in the Company for purposes of the Delaware Limited Liability Company Act, 6 Del. C. §18-101 et seq. (as may be amended, modified, supplemented or restated from time to time, and any successor to such statute, the “**Act**”), Mezzanine Borrower shall be deemed to hold such interest

solely as an “assignee” (within the meaning of Section 18-702 of the Act), and Mezzanine Borrower shall not be a member, partner or other equivalent person of JBL HoldCo, including, without limitation, for purposes of the Act; provided that, to the fullest extent permitted by applicable law, the parties will treat (x) Mezzanine Borrower as the holder of a partnership interest in JBL HoldCo for U.S. federal, state and local income tax purposes and (y) distributions and payments in respect of the Back-End Distribution Right as distributions to Mezzanine Borrower in a partner capacity to the extent such payments are not described in Section 707(a) or 707(c) of the Internal Revenue Code. Mezzanine Borrower will receive informational tax returns, including a Form K-1, with respect to the Back-End Distribution Right.

Control:

Mezzanine Lender will be the sole member of JBL HoldCo and will have the sole authority to manage JBL HoldCo (and through JBL HoldCo, the Senior Borrower) in accordance with the Operating Agreement of JBL HoldCo. Mezzanine Borrower will not have any right or authority to (i) become or to exercise any rights or powers of a member of JBL HoldCo, including, without limitation, any voting or information right or any right to participate in the management of JBL HoldCo, (ii) receive any distribution, payment or other amount except for the Back-End Participation Amount, or (iii) take part in or interfere in any manner with the management, conduct or control of the business or affairs of JBL HoldCo.

The Mezzanine Borrower will have the right to (a) modify its operating agreement to eliminate SPE provisions without triggering an event of default under the Senior Loan or the Mezzanine Loan, and (b) place control in a manager or managers selected by Holding.

Without limiting the foregoing, Mezzanine Lender may cause JBL HoldCo to execute, deliver, make and perform agreements, contracts, commitments, guarantees and undertakings as it may deem necessary, appropriate, advisable or convenient for the carrying out of any of its powers or JBL HoldCo’s objects or purposes, including agreements with affiliates of JBL HoldCo or of its Members.

Sale Lock Out/ROFR:

The Equity Participation Agreement will provide that, except as described in the paragraph titled “Mezzanine Lender Early Sale Right” below, the sale of the Property, without consent of Mezzanine Borrower, will not occur until at least 30 months after the Closing (the “**Sale Lock Out**”). The Equity Participation Agreement will further provide that, after the 30th month, until the date that is 48 months after the Closing (the “**ROFO Period**”), at any time JBL HoldCo proposes to cause Senior Borrower to sell the Property, Mezzanine Lender shall notify Mezzanine Borrower in writing of such proposal to sell and the reasonable details of material financial and other terms and conditions of the proposed sale (the “**ROFO Notice**”), and Mezzanine Borrower shall have the first right, exercisable within 10 days after receipt of the ROFO Notice (the “**ROFO Notice Period**”), to purchase the Property from Senior Borrower on the same terms as the terms set forth in the ROFO

Notice (except for the terms described below, which shall apply to a purchase by the Mezzanine Borrower) (the “**ROFO**”), by delivering written notice to Mezzanine Lender of its intent to purchase the Property (the “**ROFO Exercise Notice**”) together with a \$250,000 nonrefundable deposit (the “**Initial ROFO Deposit**”). If the Mezzanine Borrower fails to timely deliver a ROFO Exercise Notice and/or the Initial ROFO Deposit during the ROFO Notice Period, Mezzanine Lender may, following the expiration of the ROFO Notice Period, sell the Property to any bona fide independent third party so long as the total purchase consideration is at least 95% of the purchase price specified in the ROFO Notice and otherwise is on the same or substantially similar terms as (or on terms that are otherwise not materially less favorable to JBL HoldCo in aggregate than those set forth in) the ROFO Notice. If Mezzanine Borrower timely delivers a ROFO Exercise Notice and the Initial ROFO Deposit before the expiration of the ROFO Notice Period, Mezzanine Borrower shall proceed with the purchase of the Property upon the same economic terms as set forth in the ROFO; provided, however, that Mezzanine Borrower shall have 30 days after the date of the ROFO Exercise Notice to deliver to JBL HoldCo an additional non-refundable earnest money deposit in the amount of 5% of the purchase price for the Property (the “**Additional ROFO Deposit**”), and the close of escrow on the purchase and sale of the Property to Mezzanine Borrower shall occur within 60 days after the date of the ROFO Exercise Notice. If Mezzanine Borrower fails to timely deliver the Additional ROFO Deposit within 30 days after the date of the ROFO Exercise Notice or fails to close escrow on the purchase and sale of the Property within 60 days after the date of the ROFO Exercise Notice, Mezzanine Borrower will be deemed to have permanently, irrevocably waived the ROFO.

Mezzanine Lender Early Sale Right:

Notwithstanding the Sale Lock Out, from the period beginning on the date that is two (2) months after the Closing until the date that is fourteen (14) months after the Closing (the “**Early Sale Period**”), the Mezzanine Lender may in its sole discretion (but subject to the Early Sale ROFR described below) cause JBL HoldCo to cause Senior Borrower to sell the Property so long as the sale of the Property results in net proceeds distributed to Mezzanine Borrower upon the sale of not less than \$20,000,000 (the “**Minimum Net Proceeds**”). For the avoidance of doubt, a sale will be deemed to have occurred during the Early Sale Period if the Senior Borrower enters into a definitive purchase and sale agreement for the Property during the Early Sale Period and the close of escrow on the purchase and sale of the Property pursuant to the purchase and sale agreement occurs within 90 days after the end of the Early Sale Period.

If the Property is sold or is deemed to have sold during the Early Sale Period, then distributions of the net sale proceeds therefrom shall be distributed in accordance with the paragraph titled “Distribution Waterfall” set forth above, with the following exceptions: (1) for purposes of clause (b) in the Distribution Waterfall, the Minimum Multiple shall be 1.50x instead of 1.90x, and (2) for purposes of clause

(c) in the Distribution Waterfall, the split shall be 40% to the Mezzanine Lender and 60% to the Mezzanine Borrower; provided that the distribution to Mezzanine Borrower shall not be less than the Minimum Net Proceeds.

So long as the foregoing conditions are met, and subject to the right of first refusal in favor of Mezzanine Borrower set forth below, Mezzanine Lender may sell the Property during the Early Sale Period in its sole and absolute discretion. In no event, however, shall Mezzanine Lender be obligated to cause the sale of the Property during the Early Sale Period.

If Mezzanine Lender receives a bona fide written third party offer during the Early Sale Period for the purchase and sale of the Property that would result in Minimum Net Proceeds to the Mezzanine Borrower and that Mezzanine Lender desires to accept (a “**Third-Party Offer**”), then Mezzanine Lender shall notify Mezzanine Borrower in writing (the “**Offer Notice**”) of the material financial and other terms and conditions of such third-party offer (the “**Material Terms**”). At any time prior to the expiration of the five (5) day period following Mezzanine Borrower’s receipt of the Offer Notice (the “**Exercise Period**”), Mezzanine Borrower shall have the option to purchase the Property on the same terms as the Material Terms provided that Mezzanine Borrower shall have at least 60 days from the date of the Exercise Notice (as defined below) to close on the purchase (but may have an additional thirty (30) days to close if Mezzanine Borrower provides on or before the date that is sixty (60) days after delivers the Exercise Notice, an additional nonrefundable deposit to Mezzanine Lender of 10% of the purchase price for the Property), which option Mezzanine Borrower may exercise by delivery to Senior Borrower of written notice and a binding letter of intent containing the Material Terms (collectively, the “**Exercise Notice**”), executed by Mezzanine Borrower, together with a \$250,000 nonrefundable deposit (the “**Initial ROFR Deposit**”). If Mezzanine Borrower timely delivers the Exercise Notice and the Initial ROFR Deposit, the Early Sale Period shall be tolled on a day-for-day basis during the period between the date of the Exercise Notice and the closing date for the purchase and sale.

If, by the expiration of the Exercise Period, Mezzanine Borrower has not exercised its option to Purchase the Property by timely delivering the Exercise Notice and the Initial ROFR Deposit, at any time following the expiration of the Exercise Period until the expiration of the Early Sale Period, Mezzanine Lender may cause JBL HoldCo to cause Senior Borrower to consummate the purchase and sale of the Property pursuant to the Third-Party Offer (or any other offer from a bona fide third party) so long as (a) the sale would result in Minimum Net Proceeds to the Mezzanine Borrower, and (b) the total purchase consideration is at least 95% of the purchase price specified in the Offer Notice and otherwise is on the same or substantially similar terms as (or on terms that are otherwise not materially less favorable to JBL HoldCo in aggregate than those set forth in) the Material Terms set forth in the Offer Notice.

**Mezzanine Borrower
Right to Order Sale
Process:**

From the period beginning on the date that is thirty (30) months after the Closing until the date that is forty-two (42) months after the Closing (the “**Sale Process Period**”), Mezzanine Borrower may request by written notice to the Mezzanine Lender that Mezzanine Lender cause the Senior Borrower to market the Property for sale. Within thirty (30) days after Mezzanine Lender’s receipt of such notice, Mezzanine Lender will commence a marketing process with a reputable, national brokerage firm with expertise in hospitality (acceptable firms included, but are not limited to, EastDil, JLL, CBRE, and HWE). If Mezzanine Lender receives an acceptable bona fide third-party offer (as determined by Mezzanine Lender in Mezzanine Lender’s reasonable discretion), then within ten (10) business days thereafter Mezzanine Lender shall give written notice to Mezzanine Borrower of the offer. Mezzanine Borrower shall have ten (10) business days to provide written notice to Mezzanine Lender that Mezzanine Borrower desires to accept or reject the offer (or if Mezzanine Borrower does not deliver any notice, it will be deemed to have rejected the offer). If Mezzanine Borrower gives written notice to Mezzanine Lender within the above-described time period that Mezzanine Borrower desires for Mezzanine Lender to accept the offer, then Mezzanine Lender shall either (a) negotiate in good faith to enter into a definitive purchase and sale agreement with the third party for the purchase and sale of the Property and close escrow on the transaction, or (b) offer to purchase the Property on substantially the same terms as the bona fide third party offer. If Mezzanine Lender offers to purchase the Property in accordance with clause (b) of the immediately preceding sentence, Mezzanine Lender shall work in good faith and use commercially reasonable efforts to cause Mezzanine Lender or its affiliate to purchase the Property from Senior Borrower on substantially the same terms as the bona fide third-party offer.

Refinance Agents:

Prior to Closing, Senior Borrower will terminate its exclusive joint-advisory agreement with Newmark and Realty Financial Resources (the “**Advisors**”) to source refinance debt capital for the Property, and none of Mezzanine Lender, JBL HoldCo, or Senior Borrower will assume or be bound by such agreement. Senior Borrower will use commercially reasonable efforts to endeavor to enter into a new agreement on market standard terms with Advisors or another firm to source refinance debt capital.

Residences:

Mezzanine Lender would, at no additional cost or expense to Mezzanine Lender, use commercially reasonable efforts to endeavor to include in any refinancing of the Property the ability to develop and sell the Residences and use all or a portion of the proceeds of such sales to make distributions from JBL HoldCo pursuant to the Distribution Waterfall; provided, however, that Mezzanine Lender shall have no obligation to obtain such terms from any new lender and the terms of any refinancing of the Property must be acceptable to Mezzanine Lender in its sole discretion in all respects.

Cash Management:

Subject to any cash management provisions in the Senior Loan Documents that require cash to be held in Senior Lender-controlled

accounts, or provisions in the Senior Loan Documents that require cash flow generated from the Property and the Project to be used to pay down the Senior Loan, all cash flow generated from the Property and the Project shall flow through or be held in accounts controlled by Senior Borrower, which will be controlled by Mezzanine Lender as the sole member of JBL HoldCo, the sole member of Senior Borrower.

Assignment:

Mezzanine Borrower may not, without the prior written consent of Mezzanine Lender, directly or indirectly, assign, transfer or otherwise encumber its rights or obligations under the Equity Participation Agreement to any party. Mezzanine Lender would be able to transfer, sell or assign its interest in JBL HoldCo, subject to assumption by the assignee of all terms and provisions of the Equity Participation Agreement.

Indemnification:

In addition to Mezzanine Lender's typical indemnification provisions set forth in the Operating Agreement of JBL HoldCo, Mezzanine Borrower will indemnify Mezzanine Lender against any liability (other than claims arising from Mezzanine Lender's fraud or intentional misconduct) with respect to the Property, the Project, the Non-Debtor Affiliates, or the Senior Loan related to any action, event, circumstance, or occurrence in existence or occurring prior to the Closing (whether or not known or discovered prior to the Closing).

Upon the Closing, the Mezzanine Guarantors will be released from their existing Mezzanine Guaranties (but not the Senior Loan Guaranties) and the Non-Debtor Affiliates who are Mezzanine Guarantors will enter into replacement guaranties in favor of Mezzanine Lender, and/or JBL HoldCo covering the indemnified obligations set forth in the Mezzanine Guaranty of Recourse Obligations, in each case related to any action, event, circumstance, or occurrence in existence or occurring prior to the Closing (whether or not known or discovered prior to the Closing). Such replacement guaranties must be in place for a term of not less than 48 months after the Closing and Mezzanine Lender may in its discretion subject to its due diligence prior to the Closing require certain indemnification obligations to extend beyond such 48-month period

Definitive Agreements:

Upon the mutual execution of this Term Sheet, all Parties will work diligently in good faith and use commercially reasonable efforts to negotiate and execute the definitive documentation for the Transaction reflecting the material terms and conditions for the Transaction set forth in this Term Sheet or material terms and conditions substantially similar thereto as soon as reasonably practicable but not less than 30 days after the mutual execution of this Term Sheet.

Due Diligence:

Non-Debtor Affiliates and/or the receiver will cooperate with Mezzanine Lender, Mezzanine Agent, and its representatives, and will provide Mezzanine Lender, Mezzanine Agent, and its representatives with complete access to the Property the Mezzanine Borrower's, Senior Borrower's, Bishops Lodge Employment, LLC's and Mezzanine Guarantor's books and records for the purpose of conducting Mezzanine Lender's due diligence, additional site inspections, interviews with

contractors and sub-contractors, interviews with employees, and other matters that Mezzanine Lender determines are necessary or desirable in connection with its evaluation of the Transaction.

TREATMENT OF CLAIMS AND INTERESTS

- DIP Financing Claims:** As specified in the Proposed DIP Order
- Administrative and Priority Claims:** Each holder of an allowed administrative, priority, and tax claim, other than claims for DIP Financing, shall have such claim satisfied in full, in cash, or otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.
- Senior Loan Claims:** In satisfaction of Senior Lender's Claims, and the Senior Lender's portion of the DIP Financing, if any, if a chapter 11 plan acceptable to Senior Lender is confirmed and becomes effective, Senior Borrower and Senior Lender shall enter into Amended and Restated Senior Loan Documents. These will include an additional forward-looking recourse carveout guaranty, completion guaranty and carry costs guaranty from a principal of Mezzanine Lender and shall be in form acceptable to Senior Lender in its sole discretion.
- Mezzanine Loan Claims:** In satisfaction of Mezzanine Lender's Claims, JBL HoldCo shall receive 100% of the membership interests in Senior Borrower pursuant to the Transaction and on the terms set forth herein.
- General Unsecured Claims:** Each holder of an allowed unsecured claim of the Debtors will be unimpaired and have such claim satisfied in full, in cash, or otherwise receive treatment consistent with the provisions of section 1124 of the Bankruptcy Code.
- Intercompany Claims and Interests:** Claims, if any, by one Debtor against another Debtor shall be released.
- Common Equity Interests:** Interests in Senior Borrower transferred from Mezz Borrower to JBL HoldCo. Interests in Mezzanine Borrower impaired. Mezzanine Borrower will own only the profit participation received in the Transaction

OTHER TERMS OF THE PLAN

- Conditions Precedent to the Plan Effective Date:**
- The occurrence of the Effective Date will be subject to the satisfaction of certain conditions precedent customary in transactions of the type described herein, including, without limitation, the following:
 - The conditions precedent to the Transaction will have been satisfied or waived, as applicable;
 - All definitive documentation for the Transaction will, where applicable, have been executed and remain in full force and effect,

which definitive documentation will be in form and substance acceptable or reasonably acceptable, as applicable, to the Debtors, the Non-Debtor Affiliates and the Non-Debtor Parties in accordance with the RSA;

- The Bankruptcy Court will have entered the Confirmation Order and such order shall not have been stayed;
- The Debtors will have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Chapter 11 Plan;
- No governmental entity or federal or state court of competent jurisdiction will, have enacted, issued, promulgated, enforced or entered any law or order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of the Chapter 11 Plan or any of the other transactions contemplated by the RSA and no governmental entity will have instituted any action or proceeding (which remains pending at what would otherwise be the closing date) seeking to enjoin, restrain or otherwise prohibit consummation of the transactions contemplated by the RSA or the Chapter 11 Plan; and
- All reasonable and documented fees of Senior Lender (including the fees of Gibson, Dunn & Crutcher LLP and Richards, Layton & Finger, PA) and any other amounts due under the Amended Senior Loan Documents at Closing will be paid in full as provided in the RSA.
- Customary rights for the Debtors, Non-Debtor Affiliates and Non-Debtor Parties to waive certain of the foregoing conditions precedent shall be set forth in the Chapter 11 Plan.
- The Restructuring Support Agreement shall not have terminated, shall be in full force and effect and shall not be rejected or subject of a pending motion to reject and the Debtors shall be in compliance therewith.

Releases and Exculpation: The Chapter 11 Plan will include customary mutual releases to the fullest extent permitted by law, in favor of the Debtors, the Non-Debtor Affiliates, and the Non-Debtor Parties, and each of their respective current and former directors, officers, shareholders, employees, partners, managers, members, advisors, legal counsel, agents, and other representatives; provided, however, that the Chapter 11 Plan shall not include a release of the Senior Borrower or any Guarantor (as defined in the Senior Loan Documents) that does not agree to be a Releasing Party under the Plan or that objects to confirmation of the Plan; provided further, however, that the Plan shall not include a release of any claims against Richard Holland or his affiliated entities.

The Chapter 11 Plan will include a customary exculpation provision in favor of the Debtors (and other estate fiduciaries, if any) and their respective current and former directors, officers, shareholders,

employees, partners, managers, members, advisors, legal counsel, agents, and other representatives.

Other Customary Plan Provisions:

The Chapter 11 Plan will provide for other standard and customary provisions, including in respect of the cancellation of existing claims and interests, the vesting of assets and the compromise and settlement of claims, which provisions, in each case shall be in form and substance acceptable to the Non-Debtor Parties.

Amended and Restated Senior Loan Agreement
Summary of Proposed Principal Terms and Conditions

Borrower: BL Santa Fe, LLC (the “**Borrower**”)

Guarantors: Jay Wolf, and any other Person who any time becomes a guarantor and/or indemnitor of certain obligations of Borrower under this Agreement or any other Loan Documents, to include certain: (a) recourse obligations; (b) completion obligations; and (c) carry-cost obligations.

Agent: DB Bishops Lodge LLC (in its capacity as agent, the “**Agent**”)

Lender: DB Bishops Lodge LLC (in its capacity as lender, the “**Lender**”)

Loan Amount: Up to \$43,000,000, including all sums advanced prior to the Petition Date and under the Senior DIP Loan, as defined in the *interim Order (I) Authorizing the Debtors (A) To Obtain Postpetition Financing and (B) To Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling A Final Hearing, And (V) Granting Related Relief*

Interest Rate: An interest rate per annum equal to the sum of (a) the greater of (i) the Applicable Rate,¹ and (ii) 2.40113%, and (b) an amount equal to nine percent (9.00%)

Default Rate: Default Rate equal to the lesser of (a) the maximum rate permitted by applicable law, or (b) five percent (5%) above the Interest Rate

Use of Proceeds: Any sums advanced prior to the Petition Date shall remain outstanding. Borrower shall use any additional advances solely to pay for project related costs actually incurred in connection with the construction of the project improvements to the extent that such costs are set forth in a mutually acceptable project budget

Maturity: December 31, 2021 (“Initial Maturity Date”), subject to extensions if conditions to such extensions are all satisfied at the time of the extensions, to June 13, 2022 (“First Extended Maturity Date”), June 13, 2023 (“Second Extended Maturity Date”), and June 13, 2024. Conditions to the extensions include but may not be limited to (a) no event of default shall have occurred and be continuing, (b) payment of an extension fee (i) with respect to the first extension period, 0.5% of the outstanding principal balance, (ii) with respect to the second extension period, 1% of the outstanding principal balance, and (iii) with respect to the third extension period, 1% of the outstanding principal balance , (c)

¹ “**Applicable Rate**” shall mean (a) LIBOR, or (b) if and only for so long as LIBOR is unavailable in accordance with the definition of “LIBOR,” or is replaced by the Alternative Rate based on the circumstances set forth in the definition of LIBOR, the Alternative Rate.

provision of extensions of the interest rate cap, (d) a title insurance, a title continuation letter from or other evidence satisfactory to Agent (i) confirming that the Security Instrument remains a valid first-priority Lien against the Property, subject only to Permitted Encumbrances, (ii) showing title to the Property vested in Borrower, and (iii) showing no exceptions to title other than those previously approved by Agent or permitted under the Loan Documents, in a form reasonably satisfactory to Agent; (e) Borrower shall have paid all costs and expenses actually incurred by Agent and Lender in connection with such extension, including underwriting, title and reasonable legal fees and costs; (f) for the second extension and third extension, the loan to value ratio as of the First Extended Maturity Date or the Second Extended Maturity Date, as applicable, shall be equal to or less than sixty percent (60%). In addition, (A) for the first extension option, Substantial Completion shall have occurred on or prior to the Initial Maturity Date and Agent shall have received confirmation from Construction Consultant with respect thereto; and (B) for the second extension option and third extension option, Final Completion shall have occurred and Agent shall have received confirmation from Construction Consultant.

Pledge/Collateral Assignment: As security for the full and punctual payment and performance of the debt when due (whether upon stated maturity, by acceleration, early termination or otherwise), Borrower, as pledgor, shall pledge, assign, hypothecate, transfer and deliver to Agent (for the benefit of Lender) as collateral a continuing first priority lien on and security interest in substantially all of the Borrower's assets, including, without limitation, the "Rate Cap Collateral" as defined in the existing Loan Agreement

Voluntary Prepayments The Debt may be prepaid in whole but not in part (including, without limitation, pursuant to a refinancing or similar transaction) at any time prior to the Maturity Date if: (i) Borrower delivers Agent a written notice specifying the date of prepayment, no later than thirty (30) days (or such shorter period as agreed to by Agent in its sole discretion) prior to such specified date; and (ii) on or prior to such date of prepayment, Borrower pays Agent (for the benefit of Lender) any amounts due under the Loan, including without limitation, a non-refundable fee equal to one percent (1.00%) of the Outstanding Principal Balance being repaid at such time ("Exit Fee"), and all other amounts due; provided, however, the Debt may be prepaid in part in connection with a Casualty or Condemnation, and subject to Agent's (on behalf of Lender) receipt of all amounts due.

In each instance of prepayment, Borrower shall be required to pay all other sums due and no principal amount repaid may be reborrowed. Notwithstanding anything to the contrary set forth in the Loan Documents, once the Loan has been repaid in full, Lender shall not be obligated to make any further Advance under the Loan Documents.

Mandatory Prepayments If Agent is not obligated to make Net Proceeds available to Borrower for Restoration or in the event that there are excess Net Proceeds after the completion of Restoration, on the next occurring Payment Date following the date on which (a) Agent actually receives any Net Proceeds, and (b)

Agent has determined that such Net Proceeds shall be applied against the Debt, Borrower shall prepay, or Agent shall apply Net Proceeds as a prepayment of, the Debt in an amount equal to one hundred percent (100%) of such Net Proceeds. Any excess Net Proceeds after the completion of Restoration shall be applied by Agent to the repayment of the Debt.

Expenses/Indemnification: Customary expense and indemnification provisions

Conditions to Closing Confirmation of the chapter 11 plan and satisfaction of all conditions to the effective date of the chapter 11 plan, including without limitation payment of all interest accrued through the effective date at the nondefault rate and payment of all expenses of Agent and Senior Lender incurred in connection with the chapter 11 case

Governing Law: State of New York